1 2	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND SOUTHERN DIVISION	
3	UNITED STATES OF AMERI	CA, Criminal No. RWT-12-0480
4	٧.	Greenbelt, Maryland
5	JOSE JOAQUIN MORALES,	October 4, 2013
6	Defendant.	9:00 a.m.
7	/	
8 9	TRANSCRIPT OF TRIAL BEFORE THE HONORABLE ROGER W. TITUS UNITED STATES DISTRICT JUDGE, and a jury	
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23	Proceedings recorded by mechanical stenography, transcript produced by notereading.	
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PROCEEDINGS

THE COURT: Any preliminary matters before we bring the jury in?

MR. ZUCKER: I have one, judge. As the Court may recall during the examination of Mr. Stokes, he was confronted with allegations that in Agent Lam's report, Mr. Stokes was attributed to -- had made certain statements, in particular -- but the ones at issue are that Morales told him that he and his attorney, Stanley Needleman, had a guy named Robert Long killed and then at another point when asked if Needleman -- I'm sorry. And this is a quote from the report. When asked if Needleman knew of the murders, Stokes stated that Morales said that Needleman was just as much a part of it as he was. That Needleman participated in both of the murders. Needleman also got a cut of everything Morales did.

Mr. Stokes denied both of those on the stand.

And in order to complete the impeachment, I would like to be able to call Agent Lam or Agent O'Keefe, who are the reporting -- the interviewing and reporting officers on that report. Unfortunately, they are no longer available. I've asked the government if they would stipulate. They said no. Alternatively, I would like to introduce it as a business record as the report of Agent Lam, not the whole thing obviously, just the portions that I cross-examined.

The same I believe would be applicable for portions of Mr. Needleman and they've advised that they are opposed to that. So I wish to air it out with you in advance.

THE COURT: Government?

MR. CLARKE: Your Honor, I would just note that Defense Exhibit Number 12 was the report, July 30th of 2012, and what I've highlighted for the Court is the fact that present during that meeting wasn't just Trooper Lam and Agent O'Keefe, but also USP Allenwood Officer May Hughes, Lieutenant Hughes who testified just after Mr. Stokes testified. She was present at the meeting and would have heard everything that Mr. Stokes said. And if he wanted to bring out any inconsistency with between what Mr. Stokes testified to and what her memory was of what he said and whether it was inconsistent or not, he could have brought it out through her.

In addition, the Court will recall that

Mr. Zucker had a great deal of leeway in talking about

Defense Exhibit Number 12. Standing over him, pointing it

out, pointing to the paragraph. And essentially -- and

reading it, directly reading it. And so what the jury had

the benefit of was the fact that this witness very clearly

said I understand your question, I'm looking at it. He

said that's not what I said. That is what the agents

reported and that was all clearly aired.

so under 613, the issue was completely framed and the only thing that would be gained by bringing in Agent O'Keefe is something that's already in evidence which is that the author of the report did not remember or summarize it the same way that this witness has testified.

And so that's already before the jury. It's available for argument. And to now require a delay in the proceedings would be a waste of time under 611 and under 403, especially when Lieutenant Hughes, a person at that same meeting is the person who listened to the same statement.

And Agent O'Keefe who is no longer assigned, he's in Cumberland, Maryland, wasn't even an author of this report. So he would be of no benefit. He's the same as Lieutenant Hughes. And the other person, Trooper Lam, is no longer a federal task force officer. We don't have control over him. And a subpoena could have been issued I suppose. But even he if came in, Your Honor, he'd say I recall it differently. I summarized it differently. And the jury already knows that this exhibit that was discussed and cross-examined with Mr. Stokes is the writing of Trooper Lam and it's different and Mr. Zucker made it very clear how it's different. So to delay everything now just to bring that in and, of course, if Trooper Lam was brought in, we'd establish the

consistencies between Witness Stokes, and Trooper Lam's 1 2 report. 3 THE COURT: Mr. Zucker? MR. ZUCKER: Hughes would not have been 4 available because she was not the author of the report and 5 there's no reason to believe that she ever adopted it. 6 Lam is the author. 7 I'm not looking to delay the proceedings. 8 9 more than happy to introduce those same portions as 10 business records to Agent Royka who I believe will be able 11 to establish, he works for the same agency, that these are 12 the reports kept in the ordinary course of business and 13 that there's a duty to be accurate in these reports. I'm not trying to delay anything. I'm trying to do my job and 14 15 complete the impeachment. 16 My recollection is that actually Stokes 17 testified both before and after Hughes and I can't

My recollection is that actually Stokes

testified both before and after Hughes and I can't

specifically recall when this came up. I believe it was

in the latter part of my examination. But in any event, I

don't think I could have effectively completed the

impeachment through Hughes. I can through the report. I

can through a stipulation. If they're not willing to

stipulate, I will be glad --

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19

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22

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THE COURT: Well, you did confront Mr. Stokes with it. You read the whole thing to him almost. There

wasn't very much in that report of the meeting that you 1 didn't read to him. 2 3 MR. ZUCKER: Well, on the contrary, there was quite a bit that I --4 5 THE COURT: Well, the pertinent part that you're talking about was read. He was confronted with the fact 6 that the agent's notes differed from what he was 7 testifying to. 8 9 MR. ZUCKER: Actually, my recollection is I 10 don't think I read it to him. I think he read it and 11 denied it and said it says here --12 THE COURT: Oh, no. I remember vividly that I 13 kept on telling you to stop reading the whole thing to You literally read the whole thing to him or at 14 15 least the essential matters that conflict with as you 16 contend his courtroom testimony. MR. ZUCKER: I believe you may be thinking of 17 18 other portions of the examination. But I could be 19 mistaken. It was a --20 THE COURT: I think the record right now is 21 fully developed. So that you have a complete opportunity 22 during your closing argument to bring out the fact that 23 there were discrepancies between the notes made by the agent who met with him and his recollection of what was 24 25 said. And you can bring that out. I'm sure you will very effectively in closing argument. But I don't think we need to bring other people in.

You've already got before the jury that there is an inconsistency, an inconsistency the witness admitted to between what he said and what was recorded by somebody else who was there. I don't think you need anything additional to that. So your request to bring additional persons in at this late date is denied.

MR. ZUCKER: I will request then leave to at least quote directly from the report during closing.

MR. CLARKE: We would object.

THE COURT: You can quote from the testimony.

MR. ZUCKER: Yes. Well, if I read that quote, I would only read those portions that were quoted to him.

THE COURT: You are free to say that he was asked during his examination on cross, isn't it correct that agent so-and-so wrote down in his report that you said the light was red and now you're saying the light was green. Isn't that right? And he did say it was -- that he admitted that he said something about the light being red on one time and green on the stand. You can bring that out.

MR. CLARKE: Actually, in this instance, he said no, I said it was yellow. That's the agent's words who said it was red.

THE COURT: I understand. I understand. 1 But 2 you're entitled to bring out what his answers were to your 3 questions about what was in Agent Lam's report. MR. ZUCKER: Very well. 4 THE COURT: You have full latitude to do that. 5 MR. ZUCKER: Just so that there's no 6 sandbagging, my expectation would be I would write those 7 8 quotes out and say he was asked what was in the report and 9 he denied he ever said it. 10 MR. CLARKE: No. We would be opposed to quoting 11 the report --12 THE COURT: You can quote from his question. 13 MR. CLARKE: Exactly. I mean we can have that portion of 14 THE COURT: 15 the examination checked out by the court reporter. 16 MR. CLARKE: Because I think the Court really 17 struggled as did the government with Mr. Zucker in his 18 enthusiasm would just start to read the report and not 19 frame the issues. So we would ask that the report 20 itself -- I think the Court is saying that -- not be read 21 in closing argument. 22 THE COURT: The report cannot and must not be 23 read to the jury in closing. But you may quote from 24 questions you asked of him in which he agreed that there was something reported differently than what he says and 25

1 he doesn't think the guy got it right. You can do that. 2 MR. ZUCKER: Very well. 3 THE COURT: But I don't think you can stand up and waive around Agent Lam's report. You can waive around 4 5 a transcript if you have one of what his answers were to those questions. But you can't do the other. All right. 6 Any other preliminary matters? And who's the first 7 witness today? 8 9 MS. WILKINSON: The only witness the government 10 has this morning is Special Agent Royka and it's all about 11 the phone records, Your Honor. 12 THE COURT: Okay. All right. 13 MR. ZUCKER: Judge, I'd like to put another 14 matter on record for the benefit of Mr. Morales. 15 THE COURT: Yes. 16 MR. ZUCKER: There was a witness writted in, a 17 potential defense witness, Anderson Stryker. I 18 interviewed him yesterday. There's a difference of 19 opinion between myself and Mr. Morales. I have decided not to call him and Mr. Morales is opposed to my decision. 20 21 I have strong reason to believe that if called 22 to testify, Mr. Stryker would say and gave truthful 23 answers, he would say that Stokes, Marshawn Stokes 24 approached him and essentially asked him do you want to get out of serving a life sentence, this is what I'm going 25

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1
      to do, you come with me and do the same. And for other
 2
      reasons, I am electing not to call Mr. Stryker.
 3
                THE COURT: And that's your tactical decision?
                MR. ZUCKER: It is.
 4
 5
                THE COURT: All right. Okay. That's on the
      record.
 6
 7
                (Jury present.)
                THE COURT: All right. Is the government ready
 8
 9
      to proceed?
10
                MS. WILKINSON: Yes, Your Honor. Calling
11
      Special Agent Mark Royka to the stand.
12
                THE COURT: All right. Good morning, ladies and
13
      gentlemen. Here's another government witness.
14
                THE CLERK: Raise your right hand for me.
15
      Thereupon,
16
                               AGENT MARK ROYKA,
17
      having been called as a witness on behalf of the
18
      government and having been first duly sworn by the
19
      Deputy Clerk, was examined and testified as follows:
20
                THE CLERK: Thank you. Please be seated. I
21
      just need you to speak into the microphone in front of you
22
      and begin by stating your name for the record and spell
23
      your last name, please.
24
                THE WITNESS: Mark Royka. Spelled R-O-Y-K-A.
25
                            DIRECT EXAMINATION
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1 BY MS. WILKINSON: 2 Good morning, Agent Royka. Q 3 Good morning. Α Are you the case agent with respect to the U.S. 4 Q 5 versus Morales trial that the jury has been hearing over the last couple of weeks --6 7 Α Yes, I am. -- and sitting with us at counsel table 8 9 throughout the trial? 10 Yes, I have. Α 11 How are you employed? Q 12 I work with the D.E.A., the Drug Enforcement Α 13 Administration as a special agent at a High Intensity Drug 14 Trafficking Area Task Force. 15 Q Is that commonly known by the acronym, HIDTA? 16 Α Yes. 17 How long have you been working with the D.E.A.? Q 18 Α Almost 18 years now. 19 And always in the capacity as a special agent? Q 20 Yes. Α 21 And that's a law enforcement officer obviously? Q 22 Excuse me? Α 23 That's a law enforcement officer obviously? Q 24 Correct. Α 25 where are you currently assigned in terms of the Q

HIDTA office? Where is your office located?

A It's just south of Baltimore.

Q And in your time at D.E.A., what other offices have you worked in?

Moved to Minneapolis, Minnesota for a brief period of time, maybe about eight years. Then I was transferred to the office of training in Quantico, Virginia. That's where our academy is, the FBI Academy. I worked as a basic agent training instructor for tactics and physical fitness and raid training as well as an instructor on the international training team and then I moved here to Baltimore in January of 2010.

Q And in your job here in Baltimore since January 2010, what have you been doing? What kind of cases have you been working?

A I have participated in several different cases, mainly the groups with our group that we're designated for is mass traffic or mass transportation initiative. And what we do is we do bus stops, trains, planes and we do interdiction based upon that. So our investigations at least for our group is very limited. They're not necessarily long-term investigations. But we've done that.

Q And what is an interdiction?

Interdiction is basically intercepting a package 1 2 or a parcel or something that's going through the mail. 3 We'll grab it at the receipt where it comes into the U.S. Postal Service. We'll get a search warrant for that piece of parcel and then we'll look inside to see if it contains 5 any contraband or drugs and then we'll get a search 6 warrant based upon that information for a certain 7 residence and then we'll try to deliver that parcel. 8 9 And do D.E.A. agents such as yourself, do they 10 both work their own cases and provide support and 11 assistance to other D.E.A. agents' cases? 12 Α Yes. 13 And in fact have there been a number of agents Q 14 assisting you in connection with this case? 15 Α That is correct. 16 In your time with D.E.A., have you primarily 17 worked narcotics investigations prior to going to your 18 training responsibilities at Quantico? 19 Pretty much all narcotics cases. There might be Α 20 a splash of money laundering that we're allowed to 21 investigate, but it's all drug cases except for this case. 22 Have you participated in search warrants? Q 23 Yes. Α And in interviews of witnesses and targets? 24 Q 25 Yes. Α

1 And doing wiretap investigations? Q 2 Yes. Α 3 Undercover operations? Q I have not done undercover operations. 4 Α 5 Have you participated in other agents doing the Q undercover work? 6 7 Α I have. Prior to going to D.E.A., what were you doing? 8 Q 9 I was a military officer for approximately nine 10 and a half years. 11 And what branch of the military did you serve? Q 12 In the army. Α 13 And what did you do for the army? Q 14 Α I was a special forces officer. 15 Q And what is a special forces officer? How would 16 it commonly be known for the jury? 17 I guess most people know special forces as a 18 Green Beret, pretty popular with the movie way back when. 19 And you spent nine years as an active Green Q 20 Beret? 21 Well, seven. For special forces, you Correct. 22 have to go through your main branch and then transfer over 23 and get accepted. So seven of those nine years was with special forces. 24 And did you continue your military service into 25 Q

your time as a special agent for the D.E.A.? 1 2 Yes, I have. Α 3 In what capacity? Q I spent a total of 28 years in the service. 4 5 That's active duty, National Guard and reserve and then during that time, I also deployed on various operations 6 while I was with D.E.A. as well. 7 And while working narcotics investigations at 8 9 D.E.A., did that include cocaine investigations? 10 Α Yes. 11 Were you here when Special Agent Huling Q testified? 12 13 Α Yes. 14 Q And he testified about the price of a kilogram 15 of cocaine. Do you remember that? 16 Α Yes. 17 How many ounces are in a kilogram of cocaine? Q 18 Α You've got -- a kilogram is 2.2 pounds and 16 19 ounces per pound. So it's like 38. 20 38? Q 21 Did I do my math correctly? 28. Α 22 Good. Thank you. And he testified about Q 23 the approximate price of a kilogram. What is the approximate price at least back in 2008 of an ounce of 24 25 cocaine?

Anywhere from seven to twelve hundred dollars. 1 2 Now did there come a time when you became the Q 3 case agent in connection with the Morales investigation? That was back in about January or February Α Yes. 5 of this year. In 2013. And obviously, the 6 Q Okay. investigation has been going on when you arrived. Is that 7 fair to say? 8 9 That is correct. Α 10 Did you take over the responsibilities from a Q 11 particular agent? 12 Yes, I did. Α 13 And who was that agent? Q 14 Α That was Special Agent Joseph O'Keefe. 15 Q And had Agent O'Keefe been the primary agent on 16 the investigation for the years prior to 2013? 17 Yes, he was. Α 18 And where is Special Agent O'Keefe now? Q He's been reassigned to one of our other offices 19 Α in Baltimore. 20 21 Is he in western Maryland? Q 22 Yes. Α 23 About three hours, four hours away? Q 24 Correct. Α And did Agent O'Keefe work this case with 25 Q

another detective who we've come to hear testimony about, 1 Detective Chris Lam? 2 3 Α Yes. And is Detective Lam a federal law enforcement Q officer? 5 No, he's not. Like I was trying to explain 6 Α before, the task force that we're on is a mixture of 7 8 federal, state and local people. Mr. Lam is now a 9 sergeant at the MTAP, Maryland Transportation Authority 10 Police. So he was deputized as a federal agent while he 11 was at the task force. Then once he goes back to his 12 current unit, he's no longer a federal -- doesn't have any 13 federal powers anymore. He just has the same powers that 14 he did when he was before. And while he was working as a task force 15 Q 16 officer, was he working primarily with Agent O'Keefe? 17 Yes, he was. 18 Now I'm going to direct your attention to a Q 19 variety of different things that occurred during the 20 course of the trial. Were you here when Bobby Kemper 21 testified last week, Agent Royka? 22 Yes, I was. 23 And Mr. Kemper testified about leaving a Q 24 location on 1401 McHenry Street at dawn on March 24th of Did you hear that testimony? 25 2008.

```
I did.
 1
            Α
 2
                 And did I ask you to determine from public
            Q
 3
      sources when dawn occurred on March 24th?
                 MS. WILKINSON: And with the consent of counsel,
 4
 5
      Your Honor.
                 BY MS. WILKINSON:
 6
                 When is dawn?
 7
            Q
                 7:03 in the morning.
 8
 9
                 Were you about to do the military time, which I
            Q
10
      can't understand?
11
                 Yes, ma'am.
            Α
12
                 So 7:03 a.m. is dawn on March 24th?
            Q
13
                 Yes.
                       2008.
            Α
14
            Q
                 Sunrise, so to speak?
15
            Α
                 Yes.
16
                 Now in addition, Mr. Kemper testified about
            Q
17
      leaving a location on Sargeant Street where he walked to
18
      the corner of Ramsay and subsequently ended up at the B &
      O Bar. Did you hear that testimony?
19
20
                 Yes, I did.
            Α
21
                 And he had talked about an occasion when he was
            Q
22
      asked to walk that same route with law enforcement
23
      officers in preparation for his testimony. Do you recall
24
      that testimony?
25
            Α
                 Yes.
```

Were you one of the law enforcement officers 1 0 2 that went with him? 3 Yes, I was. Α And were security precautions taken in 4 Q connection with that walk on the street? 5 6 Α Yes. And were you with Mr. Kemper as he walked from 7 Q Sargeant Street up to the corner of Ramsay? 8 9 Yes. We walked side by side. 10 And was he walking at a regular normal pace? Q 11 He was walking at his regular normal pace. Α 12 And can you give the jury an idea how long it Q 13 took him to walk from Sargeant Street to the corner of 14 Ramsay? 15 Α Up to that corner, it took about, just about ten 16 minutes to get up there. 17 And once you arrived at Ramsay Street -- and 18 then we saw that CCTV tape. Have you watched that video 19 numerous times, Agent Royka? 20 Α I have. 21 And at the point where we saw Mr. Kemper, was Q 22 that approximately 9:36 a.m.? 23 Yes, it was. Α So if we were back on March 24, 2008 and he had 24 Q 25 left Sargeant Street, would that put it at about 9:24 a.m.

1 or around there when he had left Sargeant Street, 2 according to his testimony? 3 That would be correct. Now Mr. Kemper also said he traveled from Ramsay 4 Q 5 up into the B & O Bar. Did you walk with him along that route as well? 6 7 Α Yes. We walked the entire route that he talked about. 8 9 And then from start to finish, approximately how 10 long did it take you and Mr. Kemper to walking a normal 11 pace, Mr. Kemper's normal pace to the B & O Bar? 12 That was -- yes. That was just shy of 16 Α 13 minutes. 14 Q And did you determine the operating hours for 15 the B & O Bar in terms of the sign that appeared on the 16 bar door? 17 That the B & O Bar opened at 10 a.m. And what about Bill's Bar, the one down on 18 Q 19 Ramsay Street that Mr. Kemper talked about, what time did 20 that bar opened? 21 That bar opened up at 12. 22 Now we've heard a lot of testimony about the 23 lumber yard and I'm going to just look at Government's 24 Exhibit L-1-A. I'm not going to ask you to come down. 25 But just to remind the jury. Can you see this all right,

1 Agent Royka? I'm familiar with that. 2 3 And if I point over here to the area Q encompassing the red X, do you see what I'm talking about? 4 5 Yes. Is that the area we have come to know as the 6 Q lumber yard? 7 8 Α Yes. 9 Okay. Have you been to the lumber yard in the Q 10 course of the investigation? 11 I have. Α 12 And since the jury can't go to the lumber yard, Q 13 can you just use your words and describe what they would 14 see if they walked up there? 15 It's a relatively large open space and 16 relatively flat once you're up on top of that area. It's 17 barren and the distance if you are looking to the far 18 right, to the far left where there's obstructions, probably three football fields, four football fields. 19 So 20 you get the appearance that it's pretty large in that 21 area. And it's kind of out of context because you go from 22 one neighborhood to this place and then to another 23 neighborhood. 24 And when you talk about one neighborhood to the Q 25 lumber yard to another one, when we go to that area down

on Sargeant Street and we've heard testimony about a kind 1 2 of a pathway that walked up behind the school here on 3 Herkimer Street. Can you describe the path in terms of any incline? 4 5 Yes. Once you get back there, I think there's Α previous testimony that there's a skate board park right 6 7 there. And once you get past the skate board park, you go through the woods. So there's a brief period where you 8 9 are going through the woods. It's at a slight incline 10 elevation. I can't recall. It may be 20, 30 feet you 11 have to climb up and then you're on top of the lumbar yard 12 per se where all that green that you see. 13 It's on top of Sargeant Street? Q 14 Because you have to walk -- you have to 15 walk up to get to the lumber yard. 16 And the school that I just described for madam 0 17 reporter there on Herkimer Street, have you seen that 18 school? 19 Α Yes. 20 And what school is it? Q 21 That's the I believe the Southwest Baltimore --Α 22 Charter school? Q 23 -- Charter School. Α 24 There's been testimony that the Sunday before Q 25 Mr. Long was murdered was Easter Sunday. Is that correct?

1 Α Yes. 2 And that obviously the next day was Easter Q 3 Did I ask you to determine whether or not the Monday. school that was there was out on spring break on March 24, 4 5 2008? 6 Yes, you did. Α 7 Q In other words, was not operating? Correct. The --8 9 Go ahead. Q 10 Online, it said the school was closed from 21 to 11 28 March of 2008. 12 We have heard about the path that goes up on the Q 13 left hand side from Sargeant Street of the southwest 14 charter school. Behind the school, have you walked behind 15 there as well in terms of the ways to enter onto the 16 lumber yard from Sargeant Road? 17 Yes, I have. 18 And let me go ahead and pick it up here behind Q 19 the school and I'm referring to this area behind the Southwest Charter School? 20 21 Α Yes. 22 Have you been there? Q 23 Α Yes. 24 Can you describe it for the jury? Q 25 Well, the time that I was there was relatively Α

recently in the last month and a half. So it's a little bit denser. So the trees are thick and there's brush in there. The fence, I did not walk the entire length all the way to the connecting road. But I traveled on that road and there seems to be a fence that goes all the way around that school. So I walked probably 50 meters or 50 yards down that fence line and it just seems to be continuous all the way to the end of the road.

Q Now there's been some testimony from Mr. Sanchez about Government's Exhibit P-98. Do you recall that testimony?

A Yes.

Q And if I were to zoom up -- give it a chance to focus there. And looking particular at the area that was designated as Tracy Atkins Park, is there a commonly referred to address when you're talking about Tracy Atkins Park?

A Yes. 400 South Stricker Street.

Q And over here where we look at where the location of the cell tower was that Mr. Sanchez testified about, at 208 South Pulaski Street. Let me see if I can move it over so the jury can see. 208 South Pulaski Street. Do you see that there?

A Yes.

Q Did I ask you to determine pursuant to Map Quest

```
the distance between 400 South Stricker Street and 208
 1
      South Pulaski Street?
 2
 3
                 Yes, you did. It was .67 miles.
                 And how many city blocks would that be?
           Q
 5
                 Approximately 14.
           Α
                 Now there's two calls mentioned on Government's
 6
           Q
       Exhibit P-98. One is a call that occurred at 9:21 a.m.
 7
      Do you recall that testimony from Mr. Sanchez?
 8
 9
                 Yes.
10
                 And I'm going to go into Mr. Morales' phone
           Q
11
       records in a moment. But did you look at that call and
12
      determine to whom that call was connected between Mr.
13
      Morales' phone and the other phone?
14
                 MR. ZUCKER: Objection to the form of the
15
      question. He can say what phone it went -- connected to.
16
                 THE COURT: Rephrase the question.
17
                 BY MS. WILKINSON:
18
                who did (443) 277-2961 contact at 9:21 a.m.?
           Q
19
                 Schaefer Construction.
           Α
20
                 And if I go over here to the call at 9:46 a.m.,
           Q
21
      do you see that there?
22
                 Yes.
23
                 who did (443) 277-2961 contact or what was the
      contact at 9:46 a.m.?
24
                 It was a voice mail.
25
           Α
```

And what does that mean? Was it an incoming 1 0 2 ca11? 3 I would have to see the records. But it went to voice mail. So --4 Let me go up here to Government's Exhibit P-2-A 5 which is already in evidence. And we heard testimony from 6 Mr. Nicholson about this. Let's go here. Time of the 7 call. I'm going to scootch over so the jury can follow 8 9 Right here at 9:47 a.m. Do you see that there? it. 10 Yes. Α 11 Okay. The beginning, 9:46. The ending, 9:47. Q 12 Yes. Α 13 And over here it says? Q 14 Α Inbound. 15 Q And if I go down here, what does the 11443 mean? 16 That meant that it went into voice mail. Α Whose voice mail? 17 Q To Jose Morales' voice mail. 18 Α 19 I believe it was yesterday or the day before Q 20 when Mr. Nicholson testified, the Sprint custodian. 21 you recall that? 22 Α Yes. 23 And he authenticated a C.D., Government's Exhibit P-2 that contained the toll records for Mr. 24 25 Morales' cell phone. Do you remember that?

1 Α Yes. 2 Have you had occasion to look at and review the Q 3 data that was contained on Government's Exhibit P-2? Α Yes. 5 And can you give the jury an idea of how much 0 data we're talking about here and what exactly 6 Government's Exhibit P-2 contained? 7 It's probably three-inch thick double-sided 8 9 It's approximately 1077 pages. And for a total of 10 probably 40,000 different entries. And that thick bunch 11 of material is for approximately ten months that go from 12 November '07 to October '08. 13 In addition to those toll records, the jury has Q 14 seen and heard testimony about other call detail or toll records. Were you here when that testimony and that 15 16 evidence was put before the jury? 17 Α Yes. 18 And what other toll records, call detail records Q 19 were we able to obtain in the course of the investigation 20 relevant to your testimony here today? 21 Based upon the timeframe, we weren't able to get 22 tolls for every single number. We concentrated 23 approximately seven different phone numbers that we were 24 able to get tolls from. And did that include Mr. Needleman? 25 Q

1 That is correct. Α 2 Mr. White? Q 3 Α Yes. The phone in Mr. White's name that Mr. Long 4 Q 5 used? 6 Yes. Α Were those some of the phones that we were able 7 Q to get the call detail records for a certain period of 8 9 time? 10 Α Yes. 11 And based on the investigation, why weren't we Q able to get toll or call detail records for all of the 12 13 numbers that Mr. Morales was calling in this timeframe? 14 Because most of the time, we were out of date 15 meaning that we requested the toll records to a certain 16 particular company and they had already archived or gotten 17 rid of those records. We were unable to get the toll 18 records. 19 Is it fair to say, Agent Royka, that the federal Q 20 investigation into the murder of Rob Long happened more 21 than two years after March of 2008? 22 Α Yes. 23 And is that why we were out of luck with regard to some of the calls? 24 MR. ZUCKER: Objection. 25

BY MS. WILKINSON:

Q Is that why we did not get the toll and call detail records --

MR. ZUCKER: Objection. The question has already been answered. This stuff was deleted.

THE COURT: Overruled.

THE WITNESS: Yes. Usually, it's like 18 to 24 months. If you request after that, you're not going to be able to get the tolls for certain numbers.

## BY MS. WILKINSON:

Q Now the large amount of data that you got from Government's Exhibit P-2, that is Mr. Morales' toll records and the other toll records that you got, what happens to that information vis-a-vis a D.E.A. investigation into a particular target such as Mr. Morales? What do we do with that information?

A For D.E.A., we take that information and we put it into a program that we call Pen Link. And then that -- after we have the data inside that computer system, we're able to retrieve and do different searches and queries for different numbers based upon different timeframes. You can ask it to do anything with those particular numbers. So once you have that database populated, you can do just about anything and cross reference different dates.

Q Now when we get records such as Government's

Exhibit P-2 which contains the toll records for Mr. 1 2 Morales, does it also contain the numbers that are calling 3 him as well as the numbers that are being called out of that number? 5 Α Yes. But does it provide the subscriber information 6 Q that Mr. Nicholson told us about the other day, that is in 7 whose name the other phone is in? 8 9 The records just indicate what number No. 10 called, who it called, the duration and limited data like 11 that. 12 Now how is it that in an investigation we're Q 13 able to identify or get records related to the numbers 14 that are being called or called -- called to or called from? 15 16 The first thing that is done is we administer a 17 subpoena to the provider and then the provider comes back 18 with those subscriber records. 19 were efforts made in this case to identify Q 20 persons that Mr. Morales was calling and that was calling 21 Mr. Morales? 22 Α Yes. 23 And how many subpoenas in the course of the 24 investigation were approximate were issued in order to try to make those identifications and analyze his phone 25

1 records? I would estimate to be over a thousand. We have 2 Α 3 a couple of big banker boxes stuffed full with of subpoenas and responses because it's not only the D.E.A., 4 but it was also the U.S. Attorney's Office that was 5 issuing subpoenas. So we have the --6 You mean the grand jury? 7 Q 8 Yes. 9 Now you take those -- when those subpoena Q 10 responses get back from those huge banker boxes, what 11 happens to that information? Where does it go? 12 All that information again is uploaded into Pen Α 13 Link. 14 Q The database you previously described? 15 Α Yes. Now Mr. Nicholson had testified as well as we've 16 seen from other records that sometimes when subscriber 17 18 records come back, the name of the subscriber is not 19 necessarily the user of a subscriber. Is that fair to 20 say? 21 Yes. Α 22 And have you seen that phenomena in your years 23 as a special agent working for the Drug Enforcement Administration? 24 25 Quite frequently as a D.E.A. agent, the Α Yes.

people that we associate with in our line of business, a lot of times the numbers are or the names don't match who they are subscribed to.

- Q In fact is the number (443) 277-2961 that we attribute to Mr. Morales in somebody else's name?
  - A Yes. It's in the name of Mary Morales.
  - Q Which is his mother. Correct?
  - A That is correct.
- Q And Mr. Morales was in his mid 30's when he had the phone in his mother's name?
  - A Yes.

Q Now when you get back these thousands of subscriber records and you look at them and sometimes they're not in any names or in the names of other people, what investigative steps do you take to further try to identify who are using a particular cell phone?

A Yes. And it can be challenging and frustrating trying to associate a person with a telephone. But there's many different ways that we can do that. We can go to the residence where it's subscribed to. Maybe run different vehicles to find out who lives there. We can ask people. We can pick it up off of different documents. We have a system in D.E.A. that we can query. There's other federal, state and local databases that we can query and just to run the number. We can do it like we have

seen at trial where we got Ms. Burton has documents that has certain telephone numbers that are associated with different people as well as the testimony of Ms. Buss.

Q And did you do all of those investigative methods in your efforts to try to find the people that are using or associated with particular cellular telephone numbers in this case?

A Yes, we have.

Q Now did you assist in the preparation of Government's Exhibit P-6 titled Telephone Contact Chronology?

A Yes.

Q And how did you prepare telephone contact chronology?

A I used the phone records that we had and again the telephone contact chronology is a very limited time. It's from 1 February to the 28th of March. And it's a combination of approximately 25 different phone numbers. And of those 25 numbers, like I said, there's approximately -- only seven of those numbers we have tolls for. So we were limited into what we could do with that phone chronology. But the chronology encompasses 25 numbers.

Q Is it fair to say we selected, you and I selected the numbers that would be contained on telephone

1 contact chronology P-6? 2 Α Yes. 3 But is Government's Exhibit P-6 a true and accurate summary of the data that you just described for 4 5 the jury, that is, the thousands of pages of toll records, the thousands of subpoenas, the subscribers, all the 6 interviews and the public database searches and all the 7 testimony that the jury heard? Have you culled that down 8 9 into a true and accurate summary? 10 Α Yes. 11 MS. WILKINSON: Your Honor, move to admit Government's Exhibit P-6. 12 13 MR. PROCTOR: Judge, I have a mild-mannered 14 objection. If I could make it at the bench? 15 THE COURT: All right. Come to the bench. 16 (Bench conference:) 17 THE COURT: Yes, sir? 18 MR. PROCTOR: Again it's very mild mannered. 19 don't object to P-6. I don't have any problem with it 20 coming in. What I object to is the jury keeping a copy 21 They're getting one copy of everything else. And 22 to give them a copy each of this draws undue attention to 23 it. And so I would just ask after they see it, flip 24 through it, peruse it to their leisure, that it be 25 retrieved back from them and put in the exhibit book just

1 like every other exhibit. 2 MS. WILKINSON: Your Honor, this is a detailed 3 15-or-so page summary of some of the most important evidence in this case. This is a phone case involving the 4 5 use of a telephone with the intent to commit a murder for hire. This jury has been so patient listening to 40 or 6 some witnesses. This is an aide to them that they can 7 write notes upon during Agent Royka's testimony. 8 9 THE COURT: Well, that's what you're going to be 10 doing. Walking him through it? 11 MS. WILKINSON: I am going to ask him questions 12 about it. But I am also going to give them a copy, Your 13 Honor, because it's got a lot of phone numbers on it. 14 THE COURT: I understand. You can give it to 15 them while you are walking him through it. But when he's 16 finished, retrieve it and then when the case goes to the 17 jury, that will be back there with them. 18 MR. PROCTOR: One copy will be back there --19 THE COURT: One extra copy. 20 MS. WILKINSON: But my point is, Your Honor, 21 what if they write notes on them? I mean that's what I 22 would do if I was a juror. I mean that's how they --23 THE COURT: I don't mind if they -- I don't see 24 the big problem with copies of transcripts as long as they understand that it's only one exhibit. They can make 25

1 notes on it if they want or they can make notes on their 2 notebook. 3 MS. WILKINSON: But if they make notes on this, they should be able to keep them like their other notes 4 with the instruction that the Court would give them. 5 If they want to make notes on that, 6 THE COURT: I'll tell them they can make notes on that. But there's 7 going to be one and only one of these that's got an 8 9 exhibit number on it. That will be coming back at the end 10 of the case. But if they want to while they're listening 11 to this, to make notes on it, they can. 12 MS. WILKINSON: And will they be able to keep 13 that in their notes? 14 THE COURT: They can keep that as part of their 15 notes. 16 MS. WILKINSON: Of course. 17 MR. PROCTOR: And that's our objection, judge. 18 They haven't been able to take a copy each of the pictures 19 or anything else in this case. 20 THE COURT: If they want extra copies, they can 21 always ask us for extra copies. I think it's appropriate 22 in this case for them to have this as she walks him 23 through it. If they want to make any notes, they can do But I'll remind them there's one and only one of 24 25 these exhibits and they'll have the exhibit number and it

will be brought back at the end of the case. But it's being distributed to them so they can follow the testimony of the agent and they can make notes on it if they wish. But there's only one exhibit and that's the exhibit that will come back at the end of the case.

MS. WILKINSON: Thank you, judge.

THE COURT: All right. Objection is overruled.

(In open court:)

THE COURT: Ladies and gentlemen, the government is going to be permitted to provide you with copies of this exhibit, which is the telephone contact chronology while the agent is examined concerning it. It's being admitted and it will have an exhibit number that will be appended to it and at the end of the case when the exhibits are sent back to you, you will see one of these.

But in order for you to assist you in following the agent's testimony, you're being given copies. You may use those to take notes on if you wish as you listen to the testimony of the agent. But what's in front of you is a copy of an exhibit. The actual exhibit will be coming back to you with an exhibit number at the end of the closing arguments.

But what you have in front of you now is to assist you in following this. You can take notes on it. It will be a category of notes that you're taking. But

1 the exhibit is the one and only exhibit you'll get at the 2 end of the case. You may proceed. 3 MS. WILKINSON: Thank you. BY MS. WILKINSON 4 5 Agent Royka, what pieces of information did I 0 ask you to include on telephone contact chronology, 6 Government's Exhibit P-6? 7 Basically, the numbers that are associated with 8 9 the call. So you'll have two numbers. You'll also have 10 the people that are associated with those numbers and the 11 duration of the call. 12 And have you used any certain codes in terms of 0 13 if you have the toll records, for example, of Mr. Morales, 14 but you don't have the toll records of the number that's 15 being contacted, what data did you use? 16 I standardized this entire chronology and 17 made it so that the first thing you see is an outgoing 18 call. With that said, the things that are underlined are 19 the records that I used. So for example, on the 27th of 20 February, I have Jose Morales underlined because I used 21 those records because I didn't have the toll records for 22 the other number. 23 So that reflects an outgoing call from an Q

individual. But that means it was an incoming call on Mr.

24

25

Morales' record?

It would reflect an incoming. 1 And the names that are in brackets or that are 2 Q 3 contained after each phone number, what is that? Those are the names that we associate with those Α different numbers. 5 Now does that mean the number is subscribed to 6 Q 7 that person? Not necessarily. 8 And what do you mean associate with? 9 Q 10 That we attribute -- those people are using 11 those phones based upon the research and intelligence that 12 we've gathered during the course of this investigation. 13 Q And does that include exhibits that are in 14 trial? 15 Α That have already been in. 16 And testimony of witnesses? Q 17 That is correct. Α 18 Now the first example that we have here on the Q 19 top is, of course, (443) 277-2961. And how have we 20 associated that number subscribed in the name of Mary 21 Morales to Jose Morales? 22 That was already -- several different people 23 testified to that already. Harry White and Mr. Needleman, 24 Special Agent Huling as well as Melissa Dien as well as Exhibit N-11. 25

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Just to give the jury an example, we're not
 1
       going to do this for every particular one, but showing
 2
 3
      them and reminding them about Government's Exhibit N-11,
      Mr. Needleman's file folder, is that an example of where
      you might associate a number with a particular individual?
 5
                       That's one of the methods that we
 6
            Α
       described before.
 7
                 Now some of the phone numbers that are listed in
 8
 9
       telephone contact chronology are attributed to witnesses
10
      who testified in trial. Is that fair to say?
11
                 Yes.
            Α
12
                 And did you confirm with that witness in terms
            Q
13
      of their testimony and your investigation that this was in
14
       fact their number that they were using?
15
            Α
                 Yes.
16
                 Did that include Tommy Ramsay?
            Q
17
            Α
                 Yes.
18
                 The State's Attorney's Office and Ms. O'Hara?
            Q
19
                 Yes.
            Α
20
                 Mr. Needleman?
            Q
21
                 Yes.
            Α
                 Carol Shiflett?
22
            Q
23
            Α
                 Yes.
                 Patricia White?
24
            Q
25
                 Yes.
            Α
```

1 Harry White? Q 2 Yes. Α 3 The number for Rob Long in Harry White's name? Q Yes. 4 Α 5 And Detective Steve Sunderland? Q 6 Yes. Α So those all have been through interviews and 7 Q confirmation and testimony of the witnesses? 8 9 That is correct. 10 Is it fair to say that's the majority of the Q 11 numbers that we're talking about here and now I'm going to 12 ask you about the other category. All right? 13 Α Yes. 14 Q Did you attribute a particular phone number to Mr. Morales' wife, Jean Morales? 15 16 Α Yes. 17 And was that number (443) 617-9715? Q 18 Α Yes. 19 How is it that you attributed that phone Q 20 number -- were you able to get the subscriber information 21 for that phone? 22 Α No, we were not. 23 How is it that you attribute that number to Mrs. Q 24 Morales? We attribute that number to Jean Morales based 25 Α

```
1
      upon prison calls back in 2008 when Mr. Morales was
 2
      incarcerated there. And by reviewing those jail calls,
 3
      listening to those jail calls and also getting
      documentation of those numbers that are associated with
      those calls. And inside those calls, just by the way of
 5
      the person announcing themselves, identifying themselves
 6
      and the contacts of the calls with kids, we associate that
 7
      with Jeanie Morales.
 8
 9
                 So I can be clear, these are jail calls Mr.
            Q
10
      Morales made when he was arrested in Texas?
11
                 Yes.
            Α
12
                 And he would contact this phone number?
            Q
13
                 Yes.
            Α
14
            Q
                 And Mrs. Morales would be on that phone number?
15
            Α
                 Correct.
                 And she would say her name on the call?
16
            Q
17
                 At some times.
            Α
18
                 Or he would say his name on the call -- her name
            Q
      on the call?
19
20
                       Not every single time.
            Α
                 Yes.
21
                 And there were more than one?
            Q
22
            Α
                 Correct.
23
                 Fair to say, there were numerous?
            Q
24
                 Yes.
            Α
                 And that is how we associated that cell phone
25
            Q
```

with Jeanie Morales? 1 2 Yes, we did. Α 3 Okay. What about Warren Lumpkin? The number in Q Government's Exhibit P-6, we'll get to in a moment. But 4 5 how do you associate a phone number with Mr. Lumpkin? Notes from Katie O'Hara that were discussed 6 Α previously I believe. 7 And because he was a witness in one of her 8 9 cases? 10 Α Yes. 11 Did you in Government's Exhibit P-6 in front of Q 12 the jury attribute a number of cell phone numbers to Troy 13 Lucas --14 Α Yes. 15 Q -- and to Clyde Lucas? 16 Yes. For a period of 2008. Α 17 And I'm going to take off Government's P-6 for a 18 moment and show you Government's Exhibit P-14. And what is Government's Exhibit P-14? 19 20 That's just a chart that I made that shows a 21 particular number. It shows the subscriber to that 22 number. I also put down the first call to the number that 23 we associated with Jose Morales and then the last call and 24 the top part is for Troy Lucas and the bottom part is for 25 Clyde Lucas.

1 Now I don't want to repeat everything other 2 witnesses have said, but just to give the jury an example, 3 let's go to the easy one first. The number and the name of Troy Lucas. Do you see that here? 5 Α Yes. And on Government's Exhibit P-6, the chronology 6 Q the jury has, do you associate (443) 708-8313 to 7 Mr. Lucas? 8 9 Α Yes. 10 Is it subscribed in his name? Q 11 Α Yes. 12 were there other documents and exhibits Q 13 including Ms. Burton's testimony that associate that 14 number with him as well? 15 Α Yes. 16 Now that was a land line? Q 17 That is correct. Α 18 And what does that mean? Q 19 That means it's a -- usually, it is just a house Α It's not a cellular phone. 20 phone. 21 Now the other phone numbers that are listed here Q 22 before I go through them, you have used the color red to 23 signify some of these phone numbers. What does the color red mean on Government's Exhibit P-14? 24 Those are identified as Boost phones. 25 Α

Did you actually do a little key down here below 1 0 2 of the ones that are in red, meaning Boost phones equals 3 red? Α Yes. 5 Now I don't want to go back to Government's Q Exhibit P-6 yet which is the chronology, but did you also 6 use the color red in the chronology as well? 7 I did for a different reason. 8 Α 9 Not to mean Boost phone. Correct? Q 10 That's correct. Α 11 So I'm going to talk about that in a minute. Q 12 But let's stay with Government's Exhibit P-14 for a 13 moment. Mr. Nicholson testified that with regard to 14 Government's Exhibit 8313, I believe that's the number 15 that he testified that he could only show the records as 16 of May of 2008. Is that correct? 17 Α Yes. 18 Okay. So this is the number where the Comcast Q 19 record started at May 2nd, 2008. Yes? 20 It was either the second or the third. Correct. Α 21 what steps did you take to investigatively to Q 22 connect this number to Mr. Lucas prior to the time Comcast 23 had records for? In other words, in March and April of 2008. 24 we looked through the toll records that we had 25 Α

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for Mr. Morales and looked at how many times or if there
 1
      was a pattern and if there was calls from that number
 2
 3
      previous to March to Jose Morales.
                 Previous to May?
            Q
 5
                 Correct.
            Α
                 So in other words, Mr. Morales contact that
 6
            Q
 7
      number before May 3rd or 2nd, 2008 --
 8
            Α
                 Yes.
 9
                 -- and after May 2nd and 3rd, 2008?
            Q
10
            Α
                 Yes.
11
                 In addition, was 8313 listed as a contact number
            Q
12
      prior to May 2, 2008 in the parole and probation records
13
      that Ms. Burton testified to?
14
                 Yes.
                       It was in T-2.
15
            Q
                 Okay. So let's go to the top here now.
16
      Government's Exhibit (443) 563-7017. What type of phone
17
      was that?
18
            Α
                 A cellular phone.
19
                 And could you -- the name, John Holmes, could
            Q
20
      you associate that with a real living person in Baltimore,
21
      Maryland?
22
            Α
                 No.
23
                 Could you find a real living person named John
            Q
      Holmes in the Baltimore, Maryland area?
24
                 No, I could not.
25
            Α
```

1 And how do you associate 7017 to Mr. Lucas? Q 2 Ms. Burton had documentation that's already in Α 3 as T-2. And the next number, let me go to the next 4 Q number, (443) 957-7605. That's a Boost phone? 5 Yes, it is. 6 Α And who is Roxanne Parker? 7 Q Roxanne Parker has been previously described as 8 9 the wife or the girlfriend of Troy Lucas. Rocky she's 10 been called. 11 And has that address been associated to Q Mr. Lucas as well? 12 13 Yes, it has. Α 14 Now this particular phone, there is two other Q columns on Government's Exhibit P-14 in terms of the first 15 16 and last calls with Mr. Morales on that particular number. 17 With regard to Ms. Parker's number, when did those calls 18 with Mr. Morales start? 19 On 5 May of 2008. Α 20 So this particular number, 7605, we're not going Q 21 to find it on your telephone contact chronology. Correct? 22 Α No. 23 It's just another number you associated with 24 Mr. Lucas? That is correct. 25 Α

Okay. Then let's go down to 7602. (443) 1 Q 2 891-7602. How do you associate that number with Mr. 3 Morales? Well, first off, the name, Laura Magron, we 4 Α believe that just to be off -- should be -- we believe 5 that's Laura Madron, the mom of Troy and Clyde Lucas. And 6 also based upon the tolls that we have and the tolls that 7 we have for one other number ending in 9902 indicate calls 8 9 to that number. 10 And who was 9902 associated with? Q 11 That would be Clyde Lucas. Α 12 So you see contacts between 9902 and this Q 13 number, 7602, in the name of Laura Magron? 14 Α Yes. 15 Q Did you do an investigation and determine 16 whether you can find any living person in the Baltimore 17 area with the name Laura Magron? 18 Α Yes. 19 was there? Q 20 We couldn't find a Magron. Α No. 21 And was there a Laura Magron at 247 North Monroe Q 22 Street? 23 There was just one male. Α No. 24 Were you able to identify any person by the name Q 25 of Laura Magron?

1 Α No. 2 Did you meet a Laura Madron? Q 3 Yes. Α Okay. Did you personally meet her? 4 Q 5 Yes. Α would you describe her for the jury? 6 Q She's an elderly lady. I met her in a home. 7 Α She was either confined to a chair or a wheelchair. Very 8 9 frail and shook almost nonstop with her hand. Couldn't 10 stop shaking. 11 And who is she the mother of? Q 12 Troy and Clyde Lucas. Α And we heard testimony about this 8462 number 13 Q 14 yesterday through Ms. Buss. Is that correct? 15 Α Yes. 16 And that was a number also associated with the 0 17 Madron family. Correct? 18 Α Madron family or Laura Magron. 19 And what type of phone was 8462? Q 20 It was a cellular Boost phone. Α 21 And I'm going to come to this in a moment, but Q this particular number, 8462, did you see contacts with 22 that number and Mr. Morales' number in the relevant time 23 24 period? 25 Α Yes.

And what time period did you see contact between 1 2 that number and Mr. Morales? Based upon the ten or eleven months of tolls for 3 Α Mr. Morales, it only appeared on three days, the 22nd, 4 23rd and 24th March of 2008. 5 And when was Mr. Long murdered? 6 Q The 24th of March, 2008. 7 So is it only on those three days that you see 8 0 9 contacts between 8462 and Mr. Morales? 10 Α Yes. 11 Let me go down here below to numbers you Q associate with Junior. Do you see that there? 12 13 Α Yes. 14 And the first number (443) 869-8048, is that a Q 15 Boost phone? 16 Α Yes, it is. 17 Did we hear testimony from Ms. Burton about that 18 number and being a contact number for Mr. Clyde Madron? 19 Yes. It's in a letter. Α 20 Is that phone number associated with a different Q name and address? 21 22 Yes, it is. Α 23 Again, were you able to identify a Mr. Sam Dixon Q at 1478 West Baltimore Street in Baltimore, Maryland? 24 We could not. 25 Α

And going down to (443) 708-3923, was that a 1 2 number for which we could not get any further subscriber 3 information? we couldn't get any information on that Α Yes. 5 phone. How is it that you associate this number with 6 Q 7 Clyde Lucas? Based upon documentation that we've already seen 8 9 through Detective Hohman on M-8. There is a note that 10 Ms. Burton brought in that is a -- the numbers are 11 switched up just a little bit on T-13. And then there's 12 also documents, court documents that reflect that number. 13 And I'm going to show you just for 14 identification purposes only, counsel, T-17. When you 15 talk about the court documents that this number appeared 16 on, is this the type of court document you're speaking 17 about? 18 Α Yes. And is this a document from the District Court 19 Q 20 of Maryland in a matter involving Clyde Lucas? 21 Α Yes. 22 And does it list his telephone number? Q 23 It references it in two different places Yes. in these documents. 24 I'm not going to have you take it out, but 25 Q

1 that's how you got that number associated with Mr. Lucas? 2 Α Yes. 3 And was this in the 2008 timeframe? Q 4 Α Yes. 5 You know what? I think I just made a mistake. Q That's not the 3923 number. That's the 9902 number. Am I 6 right? Let me give it back to you. I think I just made 7 an error. Let me just correct it. I'm sorry. My fault. 8 9 Let me just clarify for the record. So within 10 Government's Exhibit T-17, did you associate (443) 11 708-3923 to Mr. Lucas? 12 Yes. On a form. Α 13 And what type of form was it? Q 14 Α Like a pretrial or probation form. And that is the first number we talked about and 15 Q 16 then did you associate another number to Mr. Lucas also 17 through Government's Exhibit T-17, court records from the 18 District Court of Maryland? It's the last number. The 9902 number. 19 Α Yes. 20 Thank you. And I'm sorry about being confusing Q 21 with regard to that. In fact I'm going to write it down 22 here on -- so with regard to both of these numbers, it was 23 on a court document. Correct? The 3923 and the 9902 number are both 24 Yes. contained in there. 25

There we go. I confused myself with all these 1 Q 2 I apologize. Let me go back for a moment to numbers. 3 Government's Exhibit P-14 and the phone number ending in 3923. You had testified that this is the number that 5 Ms. Burton had mentioned yesterday. In the letter. 6 Α Yes. And when Detective Hohman testified, did he have 7 Q a number similar to this number as well? 8 9 Yes. On Exhibit M-8. 10 And what number did Detective Hohman testify Q 11 about as a contact number for Clyde Lucas? Do you need a 12 copy of the exhibit? 13 Α Yes, I do. Government's Exhibit M-8 for identification 14 Q 15 purposes only. Yep. There's two different numbers. 16 17 Okay. And the first phone number that Detective Q 18 Hohman testified? 19 (443) 806-3923. Α 20 Is that slightly different than the one that's Q 21 mentioned here on Government's Exhibit P-6? 22 In P-6, it has 443-708 and on this one, it has 443-806. 23 And is that a similar error that Ms. Burton 24 Q testified about on her records? In other words, 3923 was 25

used, but the first three numbers were slightly inverted. 1 2 Yes. And Ms. Burton, it was 807 instead of 708. Α 3 And with regard to the last number with regard Q to Junior, 9902, was that a complete number that Mr. Lucas 4 had provided to Detective Hohman? 5 It's on the same sheet. 6 Α Yes. 7 And this was on May 2nd of 2008? Q Yes. 8 9 Okay. Now that we have associated or explained 10 to the jury how you associated these particular numbers 11 to -- well, let me step back and say we had subscriber 12 information for the 9902 number. Did you in fact identify 13 a man by the name of Eli Mitchell? 14 Α Yes. 15 0 And without saying anything that he said, who 16 was Eli Mitchell? What was his relationship? He was the brother of the -- his sister was the 17 18 girlfriend of Clyde Lucas. 19 I'm going to come back to that in a moment and Q 20 we're going to come back now to the telephone contact 21 chronology. So have you now testified about all the 22 individuals to whom you associate particular numbers with that had contacts with Mr. Morales and other witnesses as 23 24 indicated on the chronology? 25 Α Yes.

1	Q Now there's some other codes if you will that
2	you've used on the chronology besides the underlining
3	which indicates the record that it came from. Correct?
4	A Yes.
5	Q And the first thing is that we see entries in
6	red. We know they're not Boost telephone numbers because
7	that's the other exhibit. What do entries in red mean for
8	purposes of Government's Exhibit P-6?
9	A I use red to symbolize calls associated with
10	Troy and Clyde Lucas.
11	Q With Mr. Morales?
12	A Yes.
13	Q So I'm going to write on the top here red equals
14	calls between Lucas brothers and Mr. Morales' cellular
15	telephone. Correct?
16	A Correct.
17	Q And then I'm going to just turn to page 6 and
18	without going into the data there, yet, we see some
19	entries in blue. What are the entries in blue?
20	A Those are calls between Jose Morales and Stanley
21	Needleman.
22	Q So I'm going to go ahead and put blue equals
23	calls between SN for Stanley Needleman and JM. Okay?
24	A Okay.
25	Q And then last, we have some calls in green on

what do the calls in green signify? 1 page 10. Those are the calls that Tyrone Boykins is using 2 Α 3 the phone of Rob Long. So these are calls after Mr. Long's murder? Q 5 Yes. Α So I'm just going to put green equals Boykins 6 Q Is that all the colors that you used besides the 7 color black in Government's Exhibit P-6? 8 9 Yes. 10 I think that's all the codes that we have. Q 11 Let's get right to the data here. Did I ask you to 12 determine based on Mr. Morales' cell phone records that 13 begin in the fall of 2007 the first contact you could put him in with a number associated with Troy Lucas? 14 15 Α Yes. 16 0 And what was that phone number? 17 The (443) 708-8313. Α 18 And what was the nature and the amount of Q 19 contact and when was it? There were three calls on the first of 20 Α 21 February of 2008 that went to voice mail. 22 And what does that mean go to voice mail? Q 23 Nobody picked up. It just went straight to --Α We know what that means. Let me be clear. 24 Q 25 whose call is going into whose voice mail?

Troy Lucas' went to Jose Morales' voice mail. 1 2 So we see that on February 1. Do we see that Q 3 8313 number again later? Yes, we will. Α Let's talk about the next two entries. 5 course of the trial, did you hear testimony about Mr. 6 Leikus also representing Mr. Morales with respect to a 7 traffic, some sort of traffic violation? 8 9 Yes, we did. 10 And did you find contacts between Mr. Morales Q 11 and Mr. Leikus' phone number in that timeframe of when 12 that traffic ticket was pending? 13 Α Yes. And --14 Q Go ahead. 15 Α On the 27 of February, first call. 16 And was there one the next day as well? Q 17 Yes. On the 28th of February. Α 18 And what did you see on the 29th of February? Q 19 Calls between Stanley Needleman and Alex Leikus. Α 20 And let's go to March 10th of 2008. The jury Q 21 heard information about Mr. Long contacting Detective Sunderland on March 10th of 2008. Is that correct? 22 23 Α Yes. 24 Did you find contacts between Mr. Long and Detective Sunderland's phone that are indicated accurately 25

on Government's Exhibit P-6? 1 Based upon the toll records of Rob Long's 2 Α Yes. 3 phone. And when did those calls start? Q 5 At 12:39 p.m. Α And I'm not going to go through each one, but 6 Q did they continue throughout the morning and early 7 afternoon of March 10, 2008? 8 9 Yes. The last one is 3:08 p.m. 10 And if I direct your attention to 2:44 p.m., Q 11 would that be the first contact that you identified on 12 that day between Mr. Long and his own attorney, Mr. 13 Leikus? 14 Α Yes. 15 0 And that was after he had spoken to Detective Sunderland? 16 17 Α Correct. 18 Now above that, there's a communication between Q 19 Mr. Long and another number. Who would that be? 20 That's a phone number to Warren Lumpkin. Α And was he identified as the victim in the third 21 Q 22 case against Mr. Morales? Yes. He's been called also Pie. 23 Α 24 I'm going to go ahead and turn to the second Q page. What happened on March 11, 2008? 25

Mr. Long conducted a proffer with his lawyer and 1 members of the RATT. 2 3 And if I direct your attention to 5:08 p.m. and Q 5:09 p.m., did you see contacts between a number that you 4 5 associated with Troy or Clyde Lucas and Mr. Long? At 5:08 and 5:09? 6 7 Q Okay. Tell us about that. Yes. At 5:08 and 5:09. 8 9 Those calls, the first one is an outgoing Yes. 10 call from 7602 that we associate with Laura Magron and to 11 Rob Long and then the 5:09 Rob Long to Laura Magron. 12 Now this is the phone number that's actually in Q 13 the name of Laura Magron? 14 Correct. 15 Q Did you see contacts between Jose Morales and 16 that same Magron number, that is 7602, after this date? 17 Α Yes. 18 And when was that? Q 19 I believe the next time is we see it at 13 Α 20 March. 21 And we go ahead and turn the page to page 3. Q 22 And March 13th. Is that correct? 23 Yes. Α So the same number here that we associated with 24 Q 25 Troy Lucas is calling both Mr. Long and now calling Mr.

```
1
      Morales.
                Is that fair to say?
 2
            Α
                 Yes.
 3
                 Now you talked about associations of numbers
            Q
      between Troy and Clyde Lucas. Are there times when a
 4
 5
      number that you associated with Troy called a number you
      associated with Clyde?
 6
                 Yes. We picked that first out.
 7
                 And would you expect to find that if they're
 8
            Q
 9
      brothers?
10
                 MR. ZUCKER: Objection. Well, withdrawn.
                                                             Go
11
      ahead.
12
                 BY MS. WILKINSON:
13
            Q
                 They're brothers?
14
            Α
                 Yes.
15
            Q
                 And what numbers did you see in contact with one
16
      another, Troy and Clyde?
                 The 7017 number and the 9902 number on 14
17
18
      March 2008.
19
                 So if I go back and the jury will have
20
      Government's Exhibit P-14 with them, but that would be the
      number in the name of Mr. Holmes. Correct?
21
22
            Α
                 Yes.
23
                 Calling the number in the name of Mr. Mitchell.
            Q
24
      Correct?
25
            Α
                 Correct.
```

On March 14, 2008. Okay. So let's go down. 1 0 2 what happens according to the trial evidence on March 18, 3 2008? A search warrant was conducted at the residence Α of Jose Morales on Grimm Road. 5 And if I were to turn the page to page 4, did 6 Q you indicate on the chronology pursuant to trial evidence 7 when the time of departure for the search warrant was? 8 9 Yes. Based upon Detective Sunderland. 10 And what was that time? Q 11 The time of entry was 11:25. Α 12 And the time of exit? Q 13 1:45 p.m. Α 14 Did you note the calls to and from Mr. Morales' Q 15 phone following the execution of that search warrant? 16 Α Yes. 17 And did you note the calls as to whether or not 18 there were any contact between Detective Sunderland and 19 Mr. Long following the execution of the search warrant? 20 Α Yes. And are those indicated on Government's Exhibit 21 Q 22 P-6? 23 Right after the time of departure. Α 24 Did you see contacts between Mr. Morales and Q Harry White on the afternoon and into the evening hours of 25

## March 18th? 1 2 Α Yeah. Many. 3 Did you see contacts between Mr. Morales and Q Harry White that continued the next day and the next day? 4 5 Yes. And can you give the jury an idea of how much 6 Q 7 contact we would see between the two men in this timeframe? Just very generally. 8 9 There was multiple contacts between Harry White 10 and Jose Morales both going back and forth. 11 I want to go down here to on the search warrant Q 12 down to this reference here. And can you just read for 13 the record what we're seeing on the afternoon of the 14 search warrant, March 18, 2008? 15 Α 16 contacts between (443) 617-9715, Jean 16 Morales and (443) 277-2961, Jose Morales between 5:18 p.m. 17 and 11:14 p.m. 18 Q So how much time is that? About six hours? 19 Α Yes. 20 Sixteen contacts back and forth between husband Q and wife? 21 22 Α Correct. 23 Do we see a call that night that you associate Q 24 between Mr. Morales and Troy Lucas? 25 Α Yes.

And what time was that call and between what 1 0 2 numbers? 3 That was done at 9:42 p.m. with numbers (443) Α 708-8313, Troy Lucas to the (443) 277-2961, Jose Morales. 4 And what was the duration of that call? 5 0 That was 36 seconds. 6 Now I'm going to ask you at this point because 7 Q this is the best way I can do it and I'm sure madam 8 9 reporter would appreciate it, just refer to the last four 10 I think we're starting to get the gist of it. 11 And they're all unique. Is that fair to say? 12 Yes, they are. Α 13 So if we have the last four digits, I think that 14 will help us identify and hopefully, get all this information in our heads. 15 16 So this is the evening of March 18, 2008 and we see that contact between Troy Lucas and Mr. 17 18 Morales. I'm going to turn the page to page 5. And in 19 terms of contacts between Mr. Morales and numbers you 20 associate with Mr. Lucas, do you see any on March 19th the 21 day after the search warrant? 22 Α Yes. 23 And is Mr. Lucas now using a different phone 24 than the phone he had previously used in his name to contact Mr. Morales? 25

Yes. At 2:24 p.m., we first see contact with 1 2 the 7017 number. 3 And when I go back to Government's Exhibit P-14, Q will the jury be able to see and have you summarize the 4 5 first contact between a particular number that you associate with Troy Lucas and with Mr. Morales? Does that 6 indicate -- and you can look up on the screen with 7 Government's Exhibit P-14. 8 9 Α Yes. 10 Okay. And so that March 19th contact reflected Q 11 on Government's Exhibit P-14 as March 19 --12 Α Yes. 13 -- and then matches the record on Government's Q 14 Exhibit P-16? 15 Α Yes. 16 And have you indicated that in red here at 2:24 Q 17 p.m.? 18 Α I have. 19 How long was the contact between the 7017 number Q and Mr. Morales at 2:24 on March 19th? 20 21 It was one minute and 16 seconds. Α 22 And what do you see that follows that at 4:27? Q 23 A call through Jose Morales to 8313, Troy Lucas. Α And that's the one that's in Mr. Lucas' name? 24 Q That's the land line. 25 Yes. Α

1 was that a short duration or a long duration? Q 2 That was short. Α 3 How short? Q That was seven seconds. 4 Α 5 Now we go down to March 20th of 2008 and we know Q 6 that Mr. Long was murdered on a Monday. So March 20, 2008, what day of the week would that be? 7 8 Α Thursday. 9 On that Thursday, did you see contacts -- did 10 you continue to see contacts between Harry White and Mr. 11 Morales as you've previously testified? 12 Α Yes. 13 And would you see contacts between Mr. White and Q 14 Mr. Long? 15 Α Yes. 16 Did you ever in the whole time you analyzed Mr. 17 Morales' phone records see contacts between Mr. Morales 18 directly with the number we associate with Mr. Long, that 19 is the one in Mr. Harry White's name? 20 There was -- out of ten months of tolls, Α 21 couldn't find a single call. 22 Direct contact between the two? 0 23 Α Yes. On March 20th of 2008, I'm going to go ahead and 24 Q 25 turn the page to page 6, did you notate contacts between

Mr. Morales and Stanley Needleman? 1 2 In blue. Α Yes. 3 And right above it and I'm pointing to the top of page 6, did you note the number of contacts between 4 Harry White and Mr. Morales? 5 6 Α Yes. And how many were there directly before the 1:55 7 Q p.m. call that's noted in blue? 8 9 There were 11 contacts. 10 And between what timeframe were the contacts Q 11 between Mr. White and Mr. Morales? 12 Between 11:55 a.m. and 1:58 p.m. Α 13 And then at 1:55, what do we see? Q 14 We see a call from Jose Morales to Stanley Needleman that lasts five minutes and 27 seconds. 15 16 0 And you have in blue here in paren, call wait. where did that come from? 17 18 The call wait appears on the tolls of Stanley 19 Needleman. They don't -- the tolls of Stanley Needleman. 20 And we heard testimony that -- well, strike Q 21 In that same timeframe or right near there, what 22 contact do we see between Mr. Needleman's cell phone and 23 the State's Attorney's Office? 24 we see a phone call at 2:03 p.m. from Stanley Needleman to the State's Attorney's Office for two 25

1 minutes. And do we see continued contact between 2 Q 3 Mr. White and Mr. Morales after 2:03 p.m.? Α Yes. As indicated on Government's Exhibit P-6 and 5 Q everybody can read it. What happened at 6:04? 6 There's a call from Jose Morales to Stanley 7 Α Needleman that lasts one minute and 27 seconds. 8 9 Now as we continue on into the Friday, March 21, Q 10 2008, do Mr. Morales and Mr. Needleman continue to have 11 contact with one another? 12 Yes. Α And is that indicated in blue at the bottom of 13 Q 14 page 6? 15 Α Yes. 16 Okay. And again, right above that, is it Q 17 preceded by contacts between Mr. White and Mr. Morales 18 again? 19 Α Yes. 20 And can you just summarize the contacts between 21 Mr. Morales and Stanley Needleman on March 21, 2008? Three calls within a 30-minute timeframe 22 23 started in the morning between Stanley Needleman and Jose Morales. 24 25 And when is the last call on March -- the Q

morning of March 21st between Mr. Needleman and Mr. 1 Morales? 2 3 Α 8:52. what is the next call that you see off of Mr. 4 Q Needleman's cellular telephone? 5 Mr. Needleman makes a call to Alex Leikus. 6 7 And if I turn the page to page 7 and look at the Q top at 9:34, do you see another contact between Mr. Leikus 8 9 and Mr. Needleman? 10 Yes. This time it's reversed. It's an outgoing Α 11 call from Alex Leikus to Stanley Needleman. Lasts for two 12 minutes. 13 So we know this is Friday morning and that right Q 14 before that call between Alex and Mr. Needleman, do we see 15 Mr. Long reaching out to his sister? 16 Α Yes. And what time did Mr. Long reach out to his 17 Q 18 sister? 19 At 9:23 a.m. Α And that would be Carol Shiflett? 20 Q 21 Yes. Α 22 Into the afternoon of Friday, March 21st, do we Q 23 continue to see contact between Harry White and Jose Morales? 24 25 Yes, we do. Α

```
1
                 And have you summarized that accurately here on
            Q
      Government's Exhibit P-6?
 2
 3
                 Yes.
            Α
                 And how many contacts did you see?
 4
            Q
 5
                 Ten contacts.
            Α
                 Between what times?
 6
            Q
                 Between 10:07 a.m. and 2:14 p.m.
 7
            Α
                 Saturday, March 22nd, do you see contact for the
 8
            Q
 9
       first time between that 8048 Clyde Lucas number and Mr.
10
      Morales?
11
            Α
                 Yes.
12
                 If I go back to Government's Exhibit P-14 and I
            Q
13
       look at the 8048 Boost number, do you see that here with
14
      my pen?
15
            Α
                 Yes.
16
                 And I continue over to the first call to
            0
17
      Morales.
                 Do you see that there?
18
            Α
                 Yes.
19
                 And what date is that?
            Q
20
                 22 March of '08.
            Α
21
                 And I go back to Government's Exhibit P-6 and I
            Q
22
       see it over here. Do you also indicate the first contact
      between 8048 and Mr. Morales?
23
24
            Α
                 Yes.
25
                 How long was that contact?
            Q
```

That was for 44 seconds. 1 Α 2 And how much -- did you say 44? I see 42. Q 3 Oh, I'm sorry. My mistake. 42 seconds. Α It is small writing. What happens to this 4 Q contact between 8048 and Mr. Morales? 5 In this one, it goes to Mr. Morales' voice mail. 6 7 Do you continue to see contacts between Mr. Q Morales and his wife? 8 9 Α Yes. 10 And how many contacts did you see on that Q 11 Saturday, March 22nd between Mr. Morales and his wife, 12 Jeanie Morales? 13 In an approximately 11-hour period, you have 43 14 contacts between husband and wife, Mr. Morales and Jeanie morales. 15 16 I want to go back to the evening of March 22, 17 2008 and these calls that are listed in red. Can you 18 summarize them or tell them or describe them to the jury? 19 Starting at 9:23. 20 The first call at 9:23 p.m. is the 8462 number. 21 This number, we only see for three days. So we only see 22 it on the 22nd, 23rd and 24th and this goes straight to 23 Mr. Morales' voice mail. Is this the first time that 8462 number comes 24 Q into contact with Mr. Morales' number? 25

```
1
            Α
                 Yes.
                 And if I go back to Government's Exhibit P-14,
 2
            Q
 3
       is this the number that Ms. Buss testified about
      yesterday?
 4
 5
            Α
                 Yes, it was.
                 And if I go over again, do we see the accurate
 6
            Q
       cross reference to the first and last call between Mr.
 7
      Morales?
 8
 9
            Α
                 Yes.
10
                 Okay. So at 9:23, we see a contact between
            Q
11
       those two numbers. And how long is that contact?
12
            Α
                 9:23 is 44 seconds.
13
                 And then what happens?
            Q
14
            Α
                 Mr. Morales makes an outgoing call to the 8462
15
       number.
16
                 same number?
            Q
17
                 The same number.
            Α
18
                 How long is this contact on Saturday night, the
            Q
       night before Easter?
19
20
                 Four minutes and 26 seconds.
            Α
21
                 What happens at 11:01?
            Q
                 The 8462 number calls Jose Morales.
22
            Α
23
                 How long was that contact?
            Q
                 46 seconds.
24
            Α
25
                 Is there another contact right after it?
            Q
```

Yes. At 11:07. 1 2 And how long was that contact? Q 3 That was 65 seconds and the outgoing call from Α 8462 to Jose Morales. 4 5 MS. WILKINSON: Your Honor, would you let me know when a good time for a break is? This is possibly a 6 good time if the jury is --7 THE COURT: Let's do it. We'll go until 11:00. 8 9 (Recess.) 10 MR. PROCTOR: Judge, before the jury comes in, I 11 have an issue I think we should raise now --12 THE COURT: Okay. 13 MR. PROCTOR: -- just because it will save a 14 person sitting outside for a couple of hours. 15 government is I believe planning to call Judge Murphy in 16 its rebuttal case to basically rehabilitate Mr. Needleman's character. 17 18 THE COURT: Yes. 19 MR. PROCTOR: We believe they are estopped from 20 doing that. That collateral estoppel has attached. That 21 it is an inconsistent prosecutorial theory. The case that 22 springs to mind is Bradshaw versus Stumpf. 23 THE COURT: Wait a minute. I don't take 24 shorthand. Bradshaw versus what? 25 MR. PROCTOR: Stumpf. S-T-U-M-P-F.

happened in Stumpf was person number one goes to trial. The government argues he's the most culpable. He should get death. Person number two goes to trial. The government argues he's the most culpable. He should get death.

At Mr. Needleman's sentencing, a transcript of which I read this morning, Ms. Wilkinson called him unethical. She pointed out everything he had to say had to be corroborated because he wasn't trustworthy. And so that's the position they took at Mr. Needleman's sentencing. To then bring a witness in to say good things about Mr. Needleman and his trustworthiness is the definition of collateral estoppel and they shouldn't be allowed to go there and the Court should preclude that testimony.

I wanted to raise it now because Chief Judge
Murphy is waiting around for a couple of hours. And if
the Court agrees with me, then he could go about his
business.

MR. CLARKE: Your Honor, it's my understanding that collateral estoppel applies within the case and this is a totally different case and the government's position is not inconsistent with what it was at sentencing. At sentencing, it was a discreet act, that is it was the tax evasion of which Mr. Needleman talked about. That's where

he was not truthful with the I.R.S. But Mr. Needleman's 1 2 life and the people who know him understand that there's 3 more than just that one criminal act. The Chief Judge Murphy is going to come in 4 5 today, Your Honor, and tell about his relationship with Mr. Needleman for almost I think 40 years and he's going 6 to talk about the reputation that Mr. Needleman has with 7 the tribunal and with the Maryland Bar up until the time 8 9 that he was convicted and even after the time that he was 10 convicted and that is perfectly consistent with the 11 government's position in Stanley Needleman's case and 12 we're not collateral estopped. Those are two different 13 cases. 14 THE COURT: I don't think I can resolve that 15 question right now. I can't find a case called Bradshaw 16 versus Stumpf. 17 MR. PROCTOR: I'll find it, judge. It's a 18 Supreme Court case. 19 THE COURT: Oh, it's Supreme Court. I thought you meant -- well, I'll --20 21 MR. CLARKE: It sounds as though they are 22 co-defendants in the same case. 23 MR. PROCTOR: I think estoppel or laches applies 24 more broadly than the government thinks it does. MR. CLARKE: Well, if that case is the 25

precedent, it sounds like it's two co-defendants in the same case.

THE COURT: I'll look at the case. But I can't tell you --

MR. CLARKE: I do have another matter for the Court to think about in regards to Chief Judge Murphy. I wanted to highlight or at least find out where defense counsel might be going because I don't want to have Chief Judge Murphy in here and have a banter back and forth with accusations for which there are no facts in evidence right now. And one is, Your Honor, the possibility that defense counsel might be asking about extramarital affairs that Mr. Needleman might have had and I'd like to know if defense counsel is going to be asking about that because I've talked to Chief Judge Murphy about it and I can represent what he'll say. But I'm asking counsel if they're going to go into that.

MR. ZUCKER: It's certainly within the realm of possibility. We just found out that Judge Murphy is going to be a witness five, ten minutes ago. But it's only within the realm of possibility in testing how well he knows Mr. Needleman, if he knows about these areas.

MR. CLARKE: Your Honor, we would -- just like we argued yesterday when Mr. Zucker would wrap an argument into his questions and assume facts that aren't in

evidence, we would object to tainting the reputational testimony that Chief Judge Murphy is about to give based upon the defense's view of what a fact is that's not in evidence.

Now Chief Judge Murphy, there's no doubt that counsel has some information that they believe they have through Ms. Lambert or others that Mr. Needleman had sexual relations or a relationship with people while he was still -- when he wasn't divorced. Chief Judge Murphy will say, Your Honor, that he was aware of their marital discord and he was aware that at times he and his wife were separated. And to the extent that there may have been affairs or relationships when both parties were separated is not relevant to Mr. Needleman's truthful character. So it would just be a question that's trying to undermine Chief Judge Murphy's testimony.

In addition, it's our understanding that they
may have information obtained from Mr. Needleman's son,
Jonas Needleman, and I'd again ask defense counsel to
preview for the Court what facts they may ask from
Mr. Jonas Needleman before the chief judge takes the stand
so we can preview it briefly.

THE COURT: Well, I can't make a ruling on that right now. I'm going to have to look at this case, first of all, on the question of whether the government is

precluded from doing it. It's a fairly close call whether 1 2 you can go into somebody's marital infidelity and talking 3 about their reputation for truthfulness or ethics. I'm not going to make a decision on that right now. 4 5 By the way, I've known Joe Murphy for a long, long, long time. I was on the rules committee. 6 7 chief judge of the Court of Special Appeals of Maryland. He wasn't chief judge of the Court of Appeals. He got 8 9 promoted to that court and retired from that court. 10 MR. CLARKE: I stand corrected. 11 THE COURT: But he's still a chief. Once a 12 chief always a chief. He was the chief judge of the Court 13 of Special Appeals of Maryland, the intermediate appellate 14 court and then later, he was promoted to the high court. 15 But I can't make a resolution. Let me take a look at the 16 cases and I'll think about the matter. But in the 17 meantime, I'm afraid Joe is going to have to sit there 18 until I figure this out. 19 All right. Let's bring in the jury. 20 (Jury present.) 21 THE COURT: You may proceed. 22 MS. WILKINSON: Thank you, Your Honor. During 23 the break, Madam Clerk advised me I've been calling Government's Exhibit P-14 when it's really Government's 24 Exhibit P-12. So let me just clarify for the record that 25

1 this is Government's Exhibit P-12. I apologize. 2 thank you, Madam Clerk. 3 BY MS. WILKINSON: Before I continue with what we were discussing 4 Q 5 at the break, to clarify, Agent Royka, can you tell the ladies and gentlemen of the jury if the intention of 6 Government's Exhibit P-6, the telephone contact 7 chronology, is to identify and summarize every contact 8 9 between the numbers we associate with the Lucas brothers 10 and Mr. Morales in the timeframe we had Mr. Morales' toll 11 records for? 12 MR. ZUCKER: Objection to asking a witness what 13 the intention of a document is. 14 BY MS. WILKINSON: 15 Q Does the document include every contact you've 16 been able to identify between the Lucas brothers and Mr. 17 Morales in the relevant time period? 18 Α Yes. Based upon the starting on the 1 March to 19 28 March. 20 Q Okay. 21 Excuse me. 1 February. Α 22 The timeframe of the chronology. Q 23 Α Yes. If you found a contact between Mr. Morales and 24 Q the numbers we associate with the brothers, it's in there? 25

During that timeframe. 1 2 we took a break at the moment when you were Q 3 discussing what happened vis-a-vis the phone information the Saturday night before Easter. Did you also summarize 4 certain contacts with the relevant telephone numbers on 5 Easter Sunday, March 23rd? 6 7 Α Yes, I did. And beginning with -- and I really just kind of 8 9 want to walk through this. Agent Royka, did you see --10 indicate how you -- what calls you had reflected on 11 Government's Exhibit P-6. Starting with the first one. 12 For Easter Sunday on the 23rd of March, 2008, 13 the first call reflected is a 3:47 p.m. call of Harry 14 White going to his voice mail. 15 Q Now had you looked at Mr. White's telephone 16 tolls and determined that on March 22nd or March 23rd, he 17 hadn't been using his phone. He was in West Virginia. 18 Α Correct. This is the first call since returning 19 from West Virginia that we find --20 And then --Q 21 In the coverage area. Α 22 And who did Mr. White call at 7:41 p.m.? Q 23 His -- Rob Long's sister. Carol Shiflett. Α And is there another contact between Mr. White's 24 Q number and Rob Long's sister at 8:55? 25

1 Yes, there is. Α At what time was that? Oh, 8:55. I'm losing my 2 Q 3 mind, I swear. 9:11, was there another contact between Mr. White and Mr. Long? 4 From Harry White to Rob Long. 5 Yes. Α And another one at 9:12? 6 Q Yes. 7 Α Yes. 8 And what happens at 9:13? Q 9 Rob Long calls his voice mail. Α 10 Continuing through the evening of Easter Sunday, Q 11 March 23rd, what's the next contact you see at 9:45? 12 Α The next contact is a call from Clyde Lucas to 13 Rob Long at 9:45 p.m. 14 Q Is there another contact between the two men at 15 9:52? 16 Α Yes, there is. 17 And at 10:06? Q 18 Α Yes. And each of these three contacts that I'm 19 Q 20 looking at here between Mr. Long and Clyde Lucas, Jr., 21 what phone number was being used? 22 Clyde was using the 8048 number and Rob Long was 23 using 4241. And if we go down to 10:12, what do we see in 24 Q 25 terms of Mr. Morales' phone activity?

Here at 10:12, we see Jose Morales calling the 1 number of 8462. 2 3 And what was the duration of that call? Q Forty-five seconds. 4 Α 5 And again at 10:13? Q 6 Α Yes. So two contacts between Mr. Morales and that 7 Q 8462 number. Is that the number Ms. Buss testified to 8 9 yesterday? 10 Yes, it was. Α 11 The next call between Mr. Morales, who does he Q 12 contact? 13 Α At 10:14, Mr. Morales contacts Harry White at the 2876 number. 14 15 Q And what is the length of that call? 16 Two minutes and 27 seconds. Α And what do we see Mr. Long doing at 10:16 p.m.? 17 Q 18 Α He's calling Clyde Lucas at the 8048 number. 19 And right after that call, who does Mr. Morales Q 20 call? 21 He places an outgoing call to Clyde Lucas at the Α 22 8048 number. 23 And so Mr. Lucas talks to Mr. Long and then Mr. Q Morales at 10:16 and 10:17? 24 25 Α Yes.

And what is the length of the call between Mr. 1 Morales and the 8048 number? 2 3 That's one minute and 20 seconds. Α Continuing to about 10:56 p.m., what contact did 4 Q we see with Mr. Morales there? 5 That's an outgoing call from Troy Lucas' land 6 Α 7 line to Jose Morales lasting 35 seconds. And when you say land line, 8313, what address 8 9 was that associated with? 10 That's the one at Sargeant Street, 1328 Sargeant Α 11 Street. 12 And as we continue through the early morning Q 13 hours of March 24th, do we see contact between Mr. Long's 14 number and Mr. Lucas using that 8048 number? 15 Α Yes. 16 And what are the two contacts between Mr. Long 17 and Junior's number in the middle of the night, the early 18 morning hours of March 24th? 19 There's 40 minutes after midnight, a call Α 20 is placed from Rob Long to Clyde Lucas using the 8048 21 number. And what's the second time of the second call? 22 0 23 That's 2:47 in the morning from Clyde Lucas Α using the 8048 number to Rob Long lasting one minute. 24 Now we're on the morning of Mr. Long's murder 25 Q

1 which is Easter Monday. Correct? 2 Α Yes. 3 Now if I go to Government's Exhibit -- let me Q grab it here, let me get the right number. P-8 for the 4 5 And do you remember Mr. Sanchez testifying about Government's Exhibit P-8? 6 7 Α Yes. Can you tell the jury what the first call Mr. 8 0 9 Morales made, what time it was on March 24, 2008? 10 That would be 7:44 in the morning. Α 11 Okay. And it's indicated at the 1432 Grimm Road Q 12 address. Correct? 13 Α Yes. 14 And the first call Mr. Morales makes 7:44 a.m., Q 15 does he place a call to one of the numbers you associate 16 with the Lucas brothers that morning? 17 Yes. At 8:36 a.m., Jose Morales places an 18 outgoing call to Clyde Lucas that lasts for 30 seconds with a number of 8048. 19 20 This 8048 number, is that the number that was Q 21 being called by Mr. Long the previous evening before he left the White home? 22 23 Yes, it was. Α And after the 8:36 contact between Mr. Morales 24 and that 8048 number, does Mr. Morales place any other 25

1 calls at 8:37 a.m. on Monday morning? There was another call that's reflected at 2 Yes. 3 8:37 in the morning. It's an outgoing call from Jose Morales to the 8462 number and that contact is two minutes and ten seconds and also the last contact that we see from 5 this number, the 8462. 6 Okay. And if I could go back to Government's 7 Q Exhibit P-12? Then have you accurately reflected the 8 9 timeframe in which Mr. Morales' number has contact with 10 that 8462 number in these three-day time period? 11 Α Yes. 12 The first contact is on what day? Q 13 The 22nd of March of 2008. Α 14 And the last contact is on what day? Q The 24th of March 2008. 15 Α 16 And would be at what time? Q 17 The last contact is 8:37 on the 24th of March, Α 18 2008. 19 Now have you indicated on Government's Exhibit Q 20 P-6 when the approximate time of the gunshots? 21 I establish it at 9:41 give or take four 22 minutes based upon previous testimony by Officer 23 Glazerman. 24 Is this from the CCTV pole cam that we have seen 0 the first witness in the trial? 25

1 Α Yes. 2 Now after 9:41, do we see a contact between a Q 3 number we associate with the Lucas brothers and Mr. Morales? 5 Yes, we do. Α What time is that contact and what is the nature 6 Q of that contact? 7 At 9:57, we see an outgoing call from 7602 from 8 9 Clyde Lucas to Jose Morales at --10 MR. ZUCKER: Objection to from Clyde Lucas. 11 BY MS. WILKINSON: 12 well, let me go back here and go to Government's Q 13 Exhibit P-12. In whose name is Government's Exhibit 7602? 14 7602, the subscriber? 15 Q Yes. 16 That subscriber is Laura Magron. 17 If I go back out here, have we indicated that Q 18 this is the Laura Magron number, 7602? 19 Α Yes. Okay. At 9:57. And it contacts Mr. Morales. 20 Q 21 And what is the duration of that 9:57 a.m. call? 22 It's one minute and 48 seconds. 23 And again, to remind the jury, these calls that Q are in red are indicative of the fact of what? 24 The calls that we associate the numbers between 25 Α

1 Troy and Clyde Lucas and Jose Morales. 2 So we go down to other contacts on the morning Q 3 of Mr. Long's murder and do you see any additional contacts between numbers we associate with the Lucas brothers and Mr. Morales? 5 Two more calls. One at 10:13 a.m. and 6 Α Yes. then the other at 10:22 a.m. 7 And who is the 10:13 call between or what number 8 9 does Mr. Morales contact? 10 He calls this 7602 number that's subscribed to Α 11 Laura Magron. 12 And then at 10:22, the last four digits of the Q 13 number he contacts? 14 8048 which would be Clyde. 15 0 And later that day, do we continue to see 16 contact between some of the witnesses that testified in 17 this case to include Harry White? 18 Α Yes. There's numerous calls with Harry White. 19 Shug? Q 20 Yes. Α 21 Mr. Ramsay? Q 22 Correct. Α 23 Okay. I'm going to go down now to the first Q call that we see in green at 11:09 a.m. And based on the 24 25 evidence, was Mr. Long already dead?

1 Yes, he is. Α 2 And so we see this outgoing call and now you've Q 3 attributed the 4241 to Mr. Boykins. Is that based on his testimony? 4 5 Yes, that is. Α And I'm going to go ahead and turn the page to 6 Q page 10 and we see other entries in green. Do you see 7 that there? 8 9 Α Yes. 10 And again, have you attributed these contacts on Q 11 Mr. Long's phone to Mr. Boykins? 12 Yes. Α 13 Now I see that we made a color error at the Q 14 bottom of page 10. Can you tell the jury whether there 15 were contacts on the evening of March 24th, the day of Rob 16 Long's murder and Mr. Lucas and Mr. Morales? 17 Could you repeat? 18 I'm referring here which should be in red. Q So 19 I'm going to say red. Can you summarize those acts? 20 Oh, there was 11 contacts between the 7017 21 number and the 2961 number, the Jose Morales number. And what are the timeframes of those contacts 22 0 23 between 7017 and 2961? 24 That's approximately seven hours from 4:09 p.m. Α 25 to 11:52 p.m.

1 And did you see contacts between that 8048 2 number associated with Clyde Lucas and Mr. Morales as we11? 3 There was nine contacts between 8:51 p.m. 4 Α Yes. 5 and 11:38 p.m. Several of these calls though go to voice mail. 6 And have you indicated on Government's 7 Q 8 Exhibit -- you answered my question. Strike that. 9 March 26, 2008, did these contacts between Mr. Morales' 10 number and Mr. Clyde Lucas' number continue? 11 It did at 9:22 p.m. But that was the last call Α 12 between those two numbers. 13 Q And then on March -- which one are we talking 14 about? The 8048 number on the 26th of March 2008. 15 Α 16 This is the last call between Mr. Morales and 0 that 8048 number? 17 18 Α Yes, it is. 19 Okay. Sorry about that. Let me go back to Q Government's Exhibit P-12 and is that indicated here as 20 21 the last contact between Mr. Morales and that 8048 number 22 where my pen is pointing? 23 Α Yes. Now we've discussed earlier the 7017 number. 24 Q you see contacts between that number and Mr. Morales on 25

March 27, 2008? 1 2 Yes. We see ten contacts between the 7017 3 number and Mr. Morales. Nine out of those calls went to Mr. Morales' voice mail. 4 5 And again turning to the last page, page 11. Do we see contacts between Mr. Morales and that 7017 number? 6 We see 21 contacts between 7017 and 2961. 7 Α And do those calls or contacts between the 8 9 number associated with Troy Lucas continue into the 10 evening of March 28, 2008? 11 Records reflect two more additional calls. Α Yes. 12 One at 4:23 and the other at 4:24 p.m. 13 And between those, do you see a contact with Mr. 14 Needleman and Mr. Morales? 15 Yes. One other contact at 4:03 p.m. 16 I'm going to turn to -- let me put this aside 17 for a second and go to another date. So on Government's 18 Exhibit P-6, we were talking about a timeframe between 19 February 1, 2008 and continuing through March 28th of 2008. Correct? 20 21 Yes. Α 22 Did I also ask you to look at phone information 23 that pertains to the date of Clyde Lucas' interview with 24 Detective Hohman on May 2, 2008? 25 Yes, you did. Α

1 And on that --Q 2 MS. WILKINSON: Madam Clerk, I'm going to take a 3 number completely out of sequence. I'm going to call this P-20.4 5 BY MS. WILKINSON: Did I ask you in that Pen Link database, Agent 6 Q Royka, to summarize contacts between Mr. Morales' phone 7 and Melissa Dien, Melissa Hart Dien's phone on May 2, 8 9 2008? 10 Yes. Α 11 And did I ask you to determine whether or not Q subsequent to the calls between Mr. Morales and Ms. Dien's 12 13 number on May 2, 2008 whether you saw or noted any 14 contacts later that evening between Mr. Morales and any particular individual on May 2, 2008? 15 16 we looked at several other numbers as Α Yes. well. 17 18 Okay. So I'm going to put up here Government's Q 19 Exhibit P-20. Is that the printout from the Pen Link database? 20 21 Α Yes. Okay. And I'm going to go above. And tell us 22 Q 23 what numbers that we're looking at here. we're looking at basically five numbers. 24 25 first one we're comparing Jose Morales numbers to four

other numbers and --1 2 And these first two numbers, 8806 and 7530, who Q 3 do you attribute those to? The 8806 number is Melissa Dien. And the 7530 number? 5 Q Also to Ms. Dien. 6 Α And if I go back above, did you run Mr. Morales' 7 Q calls with either the 7602 number and the 7017 number? 8 9 Α Yes. 10 Okay. Now just to remind the jury, P-12, the Q 11 7602 number is in the name of who? 12 7602 is Laura Magron. Α And the 7107 number was in the name of? 13 Q 14 Α John Holmes. 15 Q Did we see any contacts -- first of all, does 16 this summary truly and accurately represent the number of 17 contacts between Mr. Morales and Ms. Dien on those two 18 numbers on May 2, 2008? Yes. 19 Α 20 And what time do they begin? If I go over here 21 and scootch over here to the top? Do you see that there 22 or do I need to zoom in? 23 11:13. Α No. 24 Is that in the morning? Q 25 Yes. Α

1 I don't want to count, but is it fair to say Q 2 there's probably 10, 20, 30? Did you count? 3 Α Yes. I have --4 Q How many? Between Jose Morales' number and the 8806 5 Α number, there are 20. 6 And what about the 7530 number? 7 Q There are four. 8 9 And when do they end -- I'm looking at my pen Q 10 here -- between Mr. Morales and Ms. Dien on May 2, 2008. 11 2139 or 9:39 p.m. Α 12 And after 9:39 p.m., are there contacts between Q 13 Mr. Morales and either the 7602 or the 7017 number? 14 It would be the 7602 number. 15 And how many contacts do we see with Mr. 16 Morales' number and that 7602 number in the evening hours 17 of May 2nd of 2008? 18 Α We see ten contacts between Mr. Morales and the 19 7602 number. 20 And when do they start? Q 21 At 2139 or 9:39 p.m. Α 22 And when do they end? Q 23 2156 or 9:56 p.m. Α 24 Now subsequent to that May 2nd interview of Q 25 Clyde Lucas, did you look and determine whether or not

```
1
      contact between Mr. Morales and certain phone numbers
 2
      ended?
 3
           Α
                 Yes.
                 And if I go back to Government's Exhibit P-12
 4
           Q
 5
      again, the phone number 7017, when was the last contact
      between that number and Mr. Morales?
 6
 7
           Α
                 5 May of 2008.
                 And if I go to the 7602 number, the one that was
 8
 9
      used on May 2nd, when was the last contact between that
10
      number, the name of Laura Magron and Mr. Morales?
11
                 That ended on 2 May of 2008.
           Α
12
                 And going down to 3923, when did that phone stop
           Q
13
      having contact with Mr. Morales' phone?
14
           Α
                 13 May 2008.
15
                 MS. WILKINSON: I have nothing further, Your
16
      Honor.
17
                 THE COURT: All right. Cross-examination.
18
                 MR. PROCTOR: Thank you.
19
                             CROSS-EXAMINATION
20
                 BY MR. PROCTOR:
21
                 Good afternoon or it's good morning just about.
           Q
22
      How are you, sir?
23
                 Fine. Thank you, sir.
24
                        I just have a few questions for you. A
                 Good.
25
      lot of these phone calls, you don't actually know who Mr.
```

1 Morales spoke to, do you? It's your best guess. Riaht? 2 I would characterize it as more than a guess 3 based upon the information we obtained. But I was not present during any of those phone calls. 4 5 Right. And you certainly have been here for the testimony that the Lucas family, phones were communal 6 7 property. Right? 8 There was testimony. Yes. Yes. 9 And by the way -- let me put it up on the Q 10 I have page 8 up on the screen. Do you see that, screen. 11 sir, to your right? 12 Yes. Α 13 And I'm talking specifically about that Q 14 10:56 p.m. phone call? 15 Α Yes. 16 And what do you attribute that phone call to? 0 17 The 10:56 one we associate the 8313 number as a 18 land line to Troy Lucas. 19 Okay. So you're saying it's more than Q 20 guesswork, that is a phone call between Troy Lucas and 21 Jose Morales. Right? 22 That the numbers that are associated with the 23 certain people are not guesses that they're based upon. 24 Right. So you're telling the jury, it's your Q 25 testimony that Troy Lucas at 10:56 p.m. called Jose

```
1
      Morales.
                 Right?
 2
                 I'm saying that's more than likely.
           Α
 3
                 But that's not right, is it?
           Q
                 I wasn't there.
 4
           Α
 5
                 where was Troy Lucas at 10:56 p.m. the night
           Q
      before Rob Long died?
 6
                 Based upon previous --
 7
           Α
                 Right. He was getting high in a car with Bobby
 8
           Q
 9
                Right?
      Kemper.
10
                 That was what -- yes.
           Α
11
                 And 8313 that's a land line, isn't it?
           Q
12
                 Yes.
           Α
13
                 So he certainly wasn't sitting in his home on
           Q
14
      the phone at 10:56 p.m., was he?
15
           Α
                 well, I recall the testimony that they stopped
16
      at that address before going.
                 Much earlier in the evening.
17
           Q
18
           Α
                 I don't recall that.
                                       But --
19
                 Okay. Troy wasn't home at 11:00 at night.
           Q
20
      was getting high in a car. Right?
21
                 MS. WILKINSON: Objection. That's not in
22
      evidence, Your Honor.
                 THE COURT: Sustained.
23
                 MS. WILKINSON: That's not what this witness
24
25
      testified to.
```

I believe the facts are in 1 MR. PROCTOR: 2 evidence, Your Honor, through Mr. Kemper. 3 THE COURT: Well, the jurors' recollection will control. 4 5 MR. PROCTOR: Thank you. 6 BY MR. PROCTOR: And by the way, some of these phone calls like 7 Q if you look, for example, we have that one up, 35 seconds, 8 9 one minute and 20 seconds, that's because you have the 10 exact to the second record for Mr. Morales' calls. 11 Α Yes. 12 But some of them, Sprint back then -- I don't 0 13 know if they still do -- they round up. Right? 14 They were to the minute. So if you looked 15 at the record, you can see the ones that are specific are 16 from Jose Morales' records and the other ones --17 They're trying to get me to go over my minutes 18 so they can fleece me. So even if I make a ten-second 19 phone call, I get charged a minute. Right? 20 I don't know if they do that intentionally. 21 But, yes, it's rounded up. So if there was a call for 40 22 seconds, it would reflect as one minute. 23 Okay. So I guess my question is, for example, Q 24 the phone call at 10:16 p.m. we see up there, Rob Long to Clyde Lucas, for example, says two minutes. That could 25

have been seven seconds. Right? 1 2 Α Yes. We don't know. Because Sprint would have billed 3 Q him two minutes if he went one second over one minute? 4 5 Α That is correct. You testified -- putting up P I think it's 12 --6 Q 7 that Laura Magron, that was the number you associated with Right? 8 Laura Magron. 9 Α Yes. 10 And you said you met her. Right? Q 11 Yes, I did, sir. Α 12 And she was incapacitated basically? Q 13 She was in a home and either in a chair or a 14 wheelchair. I can't remember which. But she was sitting down for the entire time. 15 16 When did you meet her? 0 17 I would say about two months ago. Α 18 what was her health like back in 2008? Q 19 I don't know. Only from what people have told Α 20 me. 21 And by the way, it's fair to say the Lucas Q brothers were -- this was a herculean endeavor because 22 23 they would always change their phone numbers. It's difficult to attribute numbers in any 24 Α 25 investigation to people that are doing something or hiding

1 something or --2 Right. Because I've had the same cell phone Q 3 since 2005. What about you? I know I've changed mine. 4 5 You up to subterfuge? Q I change it based upon my work. 6 Okay. And the Lucas brothers, they change 7 Q theirs a lot. Right? 8 9 Yes. We've heard testimony and the information 10 that I received. 11 And I guess here's my question. We don't have a Q 12 chart like this for Mr. Morales, do we? 13 Α Like that? No, we do not. 14 Q Because he had the same number the whole time? 15 Α Yes. 16 And these wealth of phone numbers we put up -- I 0 17 mean you were here. You've heard testimony that Troy 18 Lucas on occasion worked for Mr. Morales. Right? 19 Α Yes. 20 Clyde Lucas on occasion worked for Mr. Morales. Q 21 Right? I think that came in as well. 22 Α 23 Harry White worked for Mr. Morales. Right? Q 24 Through his testimony. Yes. Α I mean he said the weekend before he went to 25 Q

West Virginia, he widened driveways or doorways or 1 2 something like that. Right? 3 Mr. White, if I recall, testified that he was widening the driveway in West Virginia. 4 And so bosses often call their underlings. 5 Q Right? 6 7 Α Yes. And the timeframe that you have the records goes 8 9 from October 2007. Fair to say? For Mr. Morales I should 10 say. 11 No, sir. That's November of '07 to October of Α 12 '08. 13 Okay. And we just -- it's been impossible to Q 14 figure out what number Mr. Lucas had back in November '07. 15 Right? 16 Could you rephrase, sir? You've identified these phones attributable to 17 18 Mr. Lucas. These -- Troy Lucas -- one, two, three, four, five phones. Right? 19 20 Α Yes. 21 And the first contact with any of them is Q 22 February 1. Right? I'll put it up. 23 Α Yes, sir. Okay. But you're not suggesting that's the 24 25 first time Mr. Lucas ever had a phone in his whole life?

No, I'm not. There's other phones. 1 2 Okay. And as you sit here today, you don't know Q 3 if those phones called Mr. Morales' phone prior to February '08. Right? 4 Are you asking if there's other numbers 5 associated with Troy Lucas that are not reflected on this 6 sheet that called Mr. Morales? 7 well, I don't think you know the answer to that. 8 9 Right? We just don't know. 10 I do know. Α 11 Okay. But I guess -- let me ask a better Q 12 question. Mr. Lucas gave his probation officer a letter 13 saying he worked for Mr. Morales I think it was in '07. 14 Does that sound right? I'd have to look at the documents. But either 15 '07 or '08. 16 17 April 2008. Q 18 Α Yes, sir. And it's your understanding Mr. Lucas worked on 19 Q 20 and off -- because he was in jail every ten minutes -- for 21 Mr. Morales for quite a while. Right? 22 There's testimony to that. I did not 23 corroborate the employment records of Mr. Lucas. 24 And by the way, P-20. Right here. I have P-20 Q up on the screen. And I'll zoom in hopefully at the 25

bottom of it. And you testified, did you not, that Mr. 1 2 Morales called Laura Magron on a phone number you 3 associated with Troy Lucas on May 2nd how many times? There are ten contacts between the 7602 number and the Jose Morales number. 5 And here's -- everybody goes to law school 6 Q because they're scared of math. Okay. So help me add 7 this up. The total amount of time spent on the phone 8 9 between those two gentlemen or the phone associated with 10 Mr. Magron is -- the first one is two seconds plus 41 plus 11 That's 45 seconds. Plus 41, 86, 88, 114, 116, 118, 2. 12 141, 150 seconds. Two and a half minutes total. Right? 13 I will trust that that's added up correctly, 14 sir. 15 Q Feel free. So you say there are ten contacts. 16 But the majority of them were a couple of seconds. 17 Α Yes. 18 And it's also evident that the chronology you Q 19 made was only with respect to phone calls that you believe 20 helped in the investigation. Right? 21 I wouldn't say the word help. 22 You believe would assist the jury in the case 0 23 against Mr. Morales? 24 That were important relative to the charge Α against Mr. Morales. 25

```
Okay. And how do I put this? Mr. Morales was a
 1
           Q
 2
      very chatty cat, wasn't he?
 3
                 I only can say based on the information that was
      by the testimony. I've never met Mr. Morales.
                                                        But there
      are a lot of toll records.
 5
                 How many pages?
 6
           Q
                 I think it was 1077 for that time period between
 7
       '07 and '08.
 8
 9
                 MR. PROCTOR: Judge, can I have a second?
10
                 THE COURT: You may.
11
                 (Counsel conferred with his client.)
                 BY MR. PROCTOR:
12
13
                 Let's go back to this. Clyde Lucas and the
           Q
14
      phone numbers you attributed to him -- to your knowledge,
15
      is Clyde Lucas still alive?
16
                     Clyde Lucas is dead.
                 No.
                 And he died in late 2011?
17
           Q
18
           Α
                 I believe so.
19
                 And Mr. Morales, he was in a jail out of state
           Q
      in late 2011?
20
21
                 Yes, he was.
           Α
22
                 And prior to dying, he was in the hospital for
23
      some period of time?
24
                 MS. WILKINSON: Objection.
25
                 THE COURT: Sustained.
```

1 BY MR. PROCTOR: 2 And by the way, there are two types of cell Q 3 phone records. Right? Let me ask a better question. There's probably 102 different types of cell phone 4 5 records. There are some records where you just get Gary called Zucker and they talked for 30 seconds. 6 There --7 Α Those are some records you get. And other 8 9 records that you need a court order for show Gary called 10 Zucker and they talked for 30 seconds. And when Gary's 11 first call, he was bouncing off this tower and when he 12 finished the call, he was bouncing off this tower? 13 Yes, sir. That came out yesterday. 14 Q So here's my question. For the Melissa Hart 15 Dien records, what type did you get? 16 Those were based upon the time periods for Mr. Α 17 Morales. All those phone numbers are associated with the 18 toll records for Mr. Morales. 19 So you never retrieved Ms. Dien's records? Q 20 I am the case agent, but I can't say everything 21 that was done previous to me and I'm not aware if toll 22 records were asked for or requested for Ms. Dien. 23 Because if Ms. Dien's records showing the Q Okay. 24 cell towers, that would be useful. Right? If we had cell tower information for 25 Α

everybody, it would be extremely useful. 1 2 Well, she testified, did she not, that while Mr. Q 3 Morales met with this mystery person, she was in her car on the phone? 4 5 Α She did. And so if you had those records, you would know 6 Q exactly where she -- well, not exactly. You would have a 7 little pie chart showing where she was when she talked on 8 9 the phone? 10 Yes, you would. Α 11 The last one with the brackets around it. The Q 12 11 contacts between Troy Lucas and Jose Morales, the phone 13 number you attribute to Troy Lucas, it says several calls 14 go to voice mail. Do you know how many? 15 Α I can add those up, sir. 16 Okay. What records would you need? Q 17 Actually, yes, sir. It would be on the bottom 18 shelf of my black binder. 19 Let me get it for you, sir. Q 20 MR. PROCTOR: Permission to approach the 21 witness, Your Honor? 22 THE COURT: You may. 23 THE WITNESS: Okay, sir. 24 BY MR. PROCTOR: Okay. How many of those 11 calls went to voice 25 Q

mail? First of all, were there 11 calls? 1 2 There were 11 contacts, sir. 3 Okay. Well, why don't you run me through them? Q What were they --4 Okay. The first call at 16:09, that one went to 5 voice mail. It's also reflected as a routed call. 6 7 Q Okay. So there will be two entries on that. 8 9 So really, there's only one call and it went to 10 voice mail. Right? 11 Yes. So -- correct. So the two contacts that Α 12 those two would be one call. 13 Okay. So that's 1 and 2 and no one spoke to Q 14 anyone. Fair to say? Someone left a voice mail. Someone left a voice mail. 15 Α 16 Okav. So next one? Q Next one is at 16:31. And that was an inbound 17 18 call for 25 seconds. 19 Okay. 25 seconds. Inbound meaning the phone Q 20 rang of Mr. Morales? 21 Α Yes. 22 Q Okay. 23 The next is 16:33:02. And 16:33:02 and the one below that is a routed call and that would be associated 24 with -- so those two contacts. That's one call and that 25

```
1
      went to voice mail.
 2
                 Okay. So if my math is correct, we're through
            Q
 3
      the first five of the 11. Right?
 4
            Α
                 Yes, sir.
                 Okay. The one after that?
 5
            Q
                 The next one is 16:33 -- no. Let's see.
 6
            Α
      16:33:19.
 7
 8
            Q
                 Yes.
 9
                 The 16:33:19 is associated again with the
10
      16:33:02 above based upon the start and end dates.
11
                 Okay. So what is the next --
            Q
12
                 The next is 16:34.
            Α
13
                 Yeah.
            Q
14
            Α
                 And that's an outbound call.
15
            Q
                 Mr. Morales made a phone call.
16
                 To the 7017. Yes.
            Α
17
                 Okay. And how long was that?
            Q
18
                 That was eight seconds.
            Α
19
                 Eight seconds. Got it.
            Q
20
                 The next would be 22:47.
            Α
21
                 Got it.
            Q
22
                 Okay. That number there or the time 22:47:09 --
            Α
23
                 Yeah.
            Q
                 -- is an inbound call that's associated with the
24
25
      entry below it, which is a routed call so that was an
```

inbound call 7017 to Jose Morales for 25 seconds. 1 2 Got it. Q 3 The next would be found at 23:52. Yeah. Q And that is also an inbound routed call and that 5 those two entries are together and that would be a 6 duration of 27 seconds. 7 27, sir? 8 Q 9 27. You take the highest number when it's a 10 routed call. 11 Got it. Q 12 MR. PROCTOR: Can I have one second, please. 13 (Counsel conferred with his client.) 14 BY MR. PROCTOR: 15 Q Sir, the 16:31 call -- I'm sorry to make you 16 jump around -- if you'd go back up to that? I believe you 17 said a moment ago that that was an inbound call of 25 18 seconds? 16:31:20 is an inbound call. Correct. 19 Α 20 Did it go to voice mail or did someone actually Q 21 pick up? 22 The records indicate that it was an inbound call 23 lasting 25 seconds and I can't tell if someone picked up. It says it's for 25 seconds, inbound call. 24 If you look at the record below it? 25 Q

1 Α Yes. 2 What does that show? Q 3 The third column is blank and the duration of Α seconds, it's hard to describe. There's a chart, the 4 phone chart. When there's no dialed digits and the 5 duration is zero, that means that there's a text message. 6 7 MR. PROCTOR: Okay. If I could just approach the witness, judge? 8 9 THE COURT: You may. 10 THE WITNESS: 16:31? 11 BY MR. PROCTOR: 12 Does that show it went to voice mail? Q Yes. 13 Yes. Α 14 So the 16:31 call, was that a discussion or did Q 15 that go to voice mail? 16 Α 16:31:37, that entry went to voice mail. 17 MR. PROCTOR: Okay. So if I can approach the 18 witness, judge? 19 THE COURT: You may. 20 BY MR. PROCTOR: 21 Sir, while you were testifying so we didn't have Q 22 to do this all over again, I took notes. So I just want 23 to go through it with you and make sure I understand. The 24 evening of March 24th -- and if you need to check to make 25 sure this is accurate, please do so.

And Madam Clerk, I guess we should mark 1 this for identification. 2 3 THE CLERK: 15. MR. PROCTOR: I think I've already stolen 15. 4 Ι 5 premarked an exhibit, Madam Clerk. So could we skip 15 and go straight to 16? 6 7 THE CLERK: Yes. 16. 8 BY MR. PROCTOR: 9 So let me just -- I want to make sure that 10 this -- so I wrote the date at the top which was 11 March 24th. Okay. And I wrote the time. So the first, 12 you listed 11 contacts on your chart. Right? 13 Α Yes. 14 Q And the first one is 16:09 and it actually counts twice because it was routed? 15 16 Α Routed. Yes, sir. And 16:31, originally we said 25 seconds and 17 18 then we looked a little lower and we said no, it went to voice mail? 19 20 But still with the seconds would be correct. 21 well, the seconds would be correct. But no one Q 22 spoke to anyone. They just spent 25 seconds leaving a 23 message, whatever. Right? The duration is still 25 seconds whether 24 Yes. 25 it was a voice or if somebody answered. Yes, sir.

```
And Calls 4, 5 and 6, they were voice mail and
 1
 2
      it was routed. So it actually counts three times. Right?
 3
      And I've written the time here, 16:33. If you need to
      look at that?
 4
 5
           Α
                 Okay. 16:33?
                 Yeah.
 6
           Q
 7
           Α
                 That was a routed call that went to voice mail.
                 Right.
 8
           Q
 9
                 Yes.
           Α
10
                 And so and then we have 16:34, they actually
           Q
11
      talked for eight seconds.
12
                 The duration. Yes.
13
                 And then 10:47, there was an inbound call that
           Q
      was routed for 25 seconds?
14
15
           Α
                 Yes.
                 And then the last one that we just talked about
16
17
      was an inbound call that was routed for 27 seconds.
18
           Α
                 Yes, sir.
19
                 Okay. And this is accurate. Right?
           Q
20
                 Yeah. Based upon my interpretation from the
21
      phone records. Yes, sir.
                 MR. PROCTOR: Judge, I'd move to admit Exhibit
22
23
      16.
24
                 THE COURT: Any objection?
25
                 MS. WILKINSON: No, Your Honor.
```

1 MR. PROCTOR: Okay. Received. 2 BY MR. PROCTOR: Okay. So I just want to explain this to the 3 Q So right here on the evening of the murder, your 4 5 summary charts says there were 11 contacts between Troy Lucas and Jose Morales and several went to voice mail. 6 7 Right? 8 Yes. Α 9 But when we look at Defendant's Exhibit 16 and Q 10 I'll zoom on it, there's one contact. Right? 11 Α Yes. 12 Two? Q 13 Yes. Α 14 Q Three? 15 Α Yes. 16 Four, five, six. The reason you list 11 is when Q 17 it shows routed, you counted that twice basically. 18 Α Say that last part again, please. 19 The reason you list 11 is when it was routed Q 20 somewhere, you counted it twice? 21 I listed all -- I had a search on Pen Link and I 22 did a query for that number with that number. And when 23 Pen Link did not associate routed calls, it just goes date, time, duration, target, target name, dialed number 24 25 and dialed name. It didn't show the routed calls.

just listed 11 contacts. 1 But if I'm in Florida and someone calls me, it 2 Q 3 will show up on Pen Link twice. It will look for me in my local exchange and then it will route it to Florida because that's where I'm at. Right? 5 I think that's the -- for the call detail 6 records that we got for Mr. Morales. That's how they 7 work. 8 9 Someone didn't call me twice, did they? Q Ιt shows up twice because it routed it to Florida? 10 11 It shows up twice for a routed call. Α 12 And so while your summary says 11 total Q 13 contacts, in fact the total duration of the contacts was 14 eight seconds plus 25 seconds plus 27 seconds. A total of 60 seconds. One minute. 15 Right? 16 Α Yes. 17 And are you aware of another person living in 18 that house by the name of Van? 19 No, sir. Α 20 The Madron house by the name of Van? A nephew Q 21 or brother? Have you heard that name before? 22 Α I heard it in testimony only during this week. 23 MR. ZUCKER: Moment to consult, please. (Counsel conferred with his client.) 24 BY MR. PROCTOR: 25

```
1
                 His name is Lewis Van Damme, does that help?
           0
 2
                     It does not.
                 No.
 3
                And you don't know if someone else in the Madron
           Q
      house worked for Mr. Morales also?
 4
                No. I don't. I don't know. I don't have the
 5
      records of the employment.
 6
                MR. PROCTOR: Judge, I think that's all I have.
 7
      But if you give me a second, I will verify.
 8
 9
                 (Counsel conferred with his client.)
10
                 MR. PROCTOR: Judge, that is all I have.
11
      don't trust myself with exhibits. May I give it to Madam
      clerk?
12
13
                THE COURT: I do trust her. All right.
14
      Redirect.
15
                MR. ZUCKER: No comment on trusting Mr. Proctor.
16
                           REDIRECT EXAMINATION
17
                 BY MS. WILKINSON:
18
                It appears, Agent Royka, that Mr. Proctor has
           Q
19
      noted a double-counting error in your chronology. Is that
      fair to say?
20
21
                 That's very fair to say. That's my work and --
           Α
22
                 So --
           Q
23
                 -- I didn't mean to put that down. That's my
      fault.
24
                would this be called a mistake?
25
           Q
```

```
It's a mistake.
 1
 2
                 Okay. I'm going to go ahead and cross it out
           Q
 3
      and put 6 based on what Mr. Proctor just spent time with
      you doing. Does that correct the mistake if you will?
 4
 5
           Α
                 Yes.
                 Now with regard to May 2nd, Mr. Proctor asked
 6
           Q
      several questions about the length of the contacts between
 7
 8
      Mr. Morales and the number you associate with Laura Magron
 9
      the night that Melissa Dien testified she met with Mr.
10
      Morales and the unknown man. Do you recall that
11
      testimony?
12
           Α
                 I do.
13
                 And you said it is two and a half minutes total
            Q
14
      of those ten contacts. Do you recall him asking you that?
15
           Α
                 Yes.
16
                 Is that enough time to set up a meeting on a
           0
17
       street corner?
18
                 MR. PROCTOR: Objection.
19
                 THE COURT:
                             Basis?
20
                 MS. WILKINSON: It's a direct response to the
21
      questions --
22
                 MR. PROCTOR: Speculation.
23
                 MS. WILKINSON: -- Mr. Proctor asked about how
24
       long the length of the call was.
25
                 MR. PROCTOR:
                               I did.
```

MS. WILKINSON: I'll withdraw, Your Honor. I'll 1 2 withdraw. 3 BY MS. WILKINSON: Mr. Proctor asked you whether or not we were 4 Q able to obtain cell site information for Ms. Dien's phone. 5 Do you recall that question? 6 7 Α Yes. And how quickly does law enforcement have to act 8 9 to get cell site information as a general matter? I know 10 every phone company is different. But do you have to get 11 it simultaneously virtually? 12 MR. ZUCKER: Objection. 13 THE COURT: Overruled. 14 MR. ZUCKER: It's inconsistent with the prior 15 testimony. 16 BY MS. WILKINSON: If you know, tell us how long typically we have 17 18 to get cell site information? It's a relatively quick process. 19 Α And Ms. Dien testified that she first told law 20 Q 21 enforcement about this in May of 2011. Is that fair to 22 say? 23 Α Yes. And that meeting that had back in 2008. So that 24 25 would be three years later. Yes?

1 Α Yes. And then Mr. Stokes didn't tell us about it 2 Q 3 until 2012. Is that fair to say? MR. ZUCKER: Objection. There's no evidence 4 5 that Mr. Stokes is referring to the same meeting. MS. WILKINSON: Withdrawn. 6 BY MS. WILKINSON: 7 with regard to the 8313 number and Mr. Proctor 8 9 asked you about that. I guess it was about 10:56 p.m. 10 that there was a contact between that land line and Mr. 11 Morales' phone the night before Mr. Long was murdered. 12 Correct? 13 Α Yes. 14 And then we had -- what was the last call that Q 15 Mr. Long had with that 8048 number we associate with 16 Junior before he left the house according to Shug and 17 Harry White? 18 10:16 p.m. on the 23rd of March, 2008, there was 19 an outgoing call from Rob Long 4241 to the 8048 Clyde 20 Lucas number. And that is the last call on Mr. Long's phone 21 Q 22 before he was picked up that night? 23 Yes. Α And that would be from the Wilkens Avenue 24 Q 25 address where Shug and Harry White lived. Correct?

```
1
           Α
                Yes.
 2
                MS. WILKINSON: I don't think I have anything
 3
      further, Your Honor.
                THE COURT: All right. You may step down.
 4
 5
      Counsel, come to the bench.
                (Bench conference:)
 6
 7
                THE COURT: Does the government rest?
                MS. WILKINSON: Subject to linking up our
 8
 9
      exhibits, Your Honor.
10
                THE COURT: Subject to checking the exhibits,
11
      then you will rest?
12
                MS. WILKINSON:
                                Yes.
13
                THE COURT:
                           Is there a motion?
14
                MR. ZUCKER: Motion for judgment of acquittal,
15
      Rule 29. There is no evidence that the phones used were
16
      used to facility a murder nor for pecuniary benefit. It's
17
      rank speculation.
18
                THE COURT: Under the applicable rule, such
19
      motions all the inferences are in favor of the government
20
      and your motion is denied. Now what is on tap now?
21
                MR. PROCTOR: Mr. Folson and then we're ready to
22
      rest.
23
                THE COURT: So you got one witness?
                MR. PROCTOR: Yes. We will be done by lunch.
24
                MR. ZUCKER: There's some other matters to
25
```

discuss about other potential witnesses with Mr. Morales. 1 2 This is the only witness that's here that we're prepared 3 to go forward on. I think that's a better statement. There are other matters. So before we formally rest, I 5 need to address --THE COURT: Well, let's take your one witness. 6 7 MR. PROCTOR: And then excuse the jury and we can talk about other stuff. 8 9 THE COURT: Yes. We'll have one witness and 10 then break for lunch. I'm going to -- precisely one hour 11 for lunch. I don't want to have this be a long lunch 12 because I got to leave at 3 and I want to get the instructions in. 13 14 MR. PROCTOR: Yes, sir. 15 MR. CLARKE: Hopefully, if it's possible, we 16 would like to get Judge Murphy on. 17 THE COURT: Do you want to do him before lunch? 18 MR. CLARKE: Yeah. 19 MR. PROCTOR: We object. No. I want to do 20 Mr. Folson because he's here. 21 THE COURT: While you're up here, I have looked 22 at the question of whether Judge Murphy can be called. 23 don't find that the Stumpf case precludes the government from rehabilitating a character witness that's hired by 24 the defense. So I'm going to permit the testimony. 25

took your character witness out of turn and you're going to rebut that.

On the question of adultery, my law clerk and I looked around. It seems to me that the Eleventh Circuit in U.S. versus Ndiaye in 2006 reversed a prosecutor's use of cross-examination of a character witness observing that the district court should not have permitted the government to question the character witness regarding the letter -- this is the letter about adultery -- apparently sent to his neighbor. As the appellant argues some of the factual circumstances surrounding the letter are unknown. While the letter does perhaps suggest that he was not being entirely candid with his wife, it does not directly relate to honesty. It is unfair prejudice to the opponent in allowing these questions.

I don't see especially since what the government has proffered to me is there may have been an affair during a period of separation or something, I just don't think that raises the question of whether or not -- I think that among other things I can preclude it on the basis it would be embarrassing --

MR. ZUCKER: I understand.

THE COURT: I will not permit --

MR. ZUCKER: I understand. Just so the record is complete, our information is that there were multiple

```
affairs and that they did not coincide -- some of them did
 1
 2
      not coincide with periods of separation and that there
 3
      was --
                THE COURT: I don't think that's the basis.
 4
 5
                MR. ZUCKER: Understood.
                THE COURT: I just think going into someone's
 6
      adultery necessarily goes to their truthfulness.
 7
      will preclude it. All right. So we'll go to your one
 8
 9
      witness and then we will break for a very quick lunch.
10
                MS. WILKINSON: I'll go ahead and rest in front
11
      of the jury.
12
                THE COURT: Excuse me?
13
                MS. WILKINSON: I'll go ahead and rest in front
14
      of the jury.
                THE COURT: Well, I'll tell them that if you
15
16
      want.
                MS. WILKINSON: Okay. That's fine.
17
18
                (In open court:)
19
                THE COURT: All right. Ladies and gentlemen,
20
      the government has rested. That's all the evidence you're
      going to hear from the government. We did hear yesterday
21
22
      one defense witness out of turn. And we now will begin
23
      the defense case and they will be calling one witness that
      we understand is short and then we will break for lunch.
24
      You may proceed.
25
```

1	MR. PROCTOR: Judge, at this time we will call
2	William Folson.
3	MS. WILKINSON: I've indicated to Mr. Proctor, I
4	have no objection to this witness testifying as an expert
5	as Mr. Sanchez did to cell site information.
6	THE COURT: All right.
7	MR. PROCTOR: And so based on that, judge, I'll
8	give the ten-cent version.
9	THE COURT: All right.
10	THE CLERK: Raise your right hand, please.
11	Thereupon,
12	WILLIAM FOLSON,
13	having been called as a witness on behalf of the
14	defense and having been first duly sworn by the
15	Deputy Clerk, was examined and testified as follows:
16	THE CLERK: Thank you. Please be seated. I
17	just need you to speak into the microphone in front of you
18	and begin by stating your name. And if you would spell
19	your last name for me?
20	THE WITNESS: My name is William Folson. Last
21	name is spelled F-O-L-S-O-N.
22	DIRECT EXAMINATION
23	BY MR. PROCTOR:
24	Q Good afternoon, Mr. Folson.
25	A Good afternoon, sir.

1 What is your occupation? 0 2 I'm currently the director and chief forensic 3 examiner for the Tecport Digital Forensics Laboratory located in Harrisburg, Pennsylvania. And in connection with that, what do you do 5 0 every day? 6 Every day, I process forensic cases related to 7 all types of digital forensics. Could be cell phones, 8 9 computers, GPS systems, audio and video forensics. 10 And how long have you been doing that? Q 11 With Tecport, I've been at Tecport approximately Α 12 a year and a half. Prior to that, for approximately three 13 years, I had my own firm in digital forensics and prior to 14 that, I worked for the defense computer forensics 15 laboratory for approximately five years. And have you ever taught -- you ever been a 16 0 17 teacher, a professor or anything like that? 18 Yes. I'm an adjunct professor with Stevenson 19 University. I teach both undergraduate and graduate level 20 college courses in digital forensics. 21 And what's your educational background, sir? Q 22 Currently, I'm a doctoral student with Capital 23 College working on my doctorate in science and information 24 assurance. I also hold two Masters Degrees. One is a

Masters in business administration. The other is a Master

25

of Science in information technology. Both of those degrees are from the University of Maryland Graduate School of Management and Technology. I hold a Bachelor of Science Degree in legal studies with a minor in finance from the University of Maryland University College.

Q Have you ever presented or published anything in the area of digital forensics?

A Yes. I'm a contributing author to the ISC Squared which is accrediting body which certifies people in forensics. They are currently publishing a book on what they call a certified cyber forensics professional certification. I am a contributing author to that book.

I've also done presentations to the most recent being about two weeks ago to the Maryland Office of the Public Defender. That was on historical cell site analysis and cell phone forensics and I've done other presentations in digital forensics in general.

Q Okay. Have you ever testified as an expert in court before?

A I have.

Q Approximately which courts and how many times?

A Twice with the District Court of Maryland and twice I believe with the Circuit Court for Baltimore County and once with the Military District of Washington, First Circuit. That was a military court martial.

1 MR. PROCTOR: And, judge, at this time we would 2 offer Mr. Folson as an expert in digital forensics? 3 THE COURT: Without objection by the government, he will be permitted to give opinions in those fields. 4 5 BY MR. PROCTOR: Did there come a time, Mr. Folson, that you were 6 Q asked to consult on this case? 7 8 Yes, sir. 9 And approximately when was that? Q 10 That would be several months ago. I don't know Α 11 the exact date. 12 Me either. And in connection with your Q 13 consultation, what were you provided with? 14 I was provided with what we call call detail 15 records, better known as cell phone records and I was also 16 provided with cell tower data that we were able to map the 17 cell phone records to specific cell towers in a geographic 18 region. 19 And you were in the courtroom when Mr. Sanchez Q 20 testified. Right? 21 Α Yes, sir. 22 So basically you got what he got? Q 23 Yes, sir. Α 24 And based on the data provided to you, what did Q you do? 25

I took the cell tower data we had available and 1 the call detail records and I plotted the call detail 2 3 records against the cell towers for what we call repole area 438 which is just a specific graphic region defined 5 by the cell phone company itself. MR. PROCTOR: Okay. May I approach the witness, 6 7 judge? 8 THE COURT: You may. 9 BY MR. PROCTOR: 10 I'm showing you what I have premarked as Q 11 Exhibits 15-A through Defense Exhibit 15-A through 15-G. 12 Just flip through those, sir, and tell me if you recognize 13 them. 14 Yes. These are maps I prepared mapping the call 15 detail records with specific cell towers. 16 Okay. And are they a fair and accurate 0 17 depiction? 18 Α They are. 19 MR. PROCTOR: At this time we would move Defense 20 Exhibit 15-A through 15-G in. 21 MS. WILKINSON: No objection. 22 THE COURT: Received. 23 MR. PROCTOR: If I may retrieve them so I may 24 put them up on the screen? 25 BY MR. PROCTOR:

```
I'll start with 15-A and put that up on the
 1
 2
       screen and I'll try and make it nice so that the jury can
 3
      see it. If you need me to zoom in or anything like that,
      Mr. Folson, or move it on the page, just say the word and
 5
      I'll be happy to do it. Do you see 15-A --
                 Yes, sir.
 6
            Α
 7
            Q
                 -- on your screen?
                 I do.
 8
            Α
 9
                 What is it?
            Q
10
                 15-A is a plot of the call detail records for
            Α
11
      the cell towers for March 25, 2008.
12
                 Do you know the phone number?
            Q
13
                 I believe it was 2961.
            Α
14
            Q
                 I'm sorry?
15
            Α
                 The phone number ending in 2961.
16
                 And you've been in court and you know that phone
            0
      to be attributed to Jose Morales.
17
                                           Right?
18
            Α
                 Yes, sir.
19
                 Okay. So in a nutshell, in layman's terms, this
            Q
20
      is where Jose's phone was when he was making and receiving
21
      calls on March 25th?
22
            Α
                 Yes, sir.
23
                 And you know that Mr. Long died on March 24.
            Q
24
      Right?
                 That is correct.
25
            Α
```

So this is where Mr. Morales' phone was the day 1 0 after? 2 3 That is correct. Α why don't you walk the jury through basically 4 Q what it shows? 5 Basically, this just shows the cell call 6 Α activity mapped to specific cell towers for this region. 7 8 This is what we call Repole Region 438 as defined by the 9 cell phone company and all this map really shows is just 10 which towers the cell phone was connecting to and by 11 connecting, that could be either receiving a phone call or 12 making a phone call. And it just maps the activity for 13 each cell tower for that time period for the 25th. 14 MR. PROCTOR: Okay. And judge, can I approach? 15 THE COURT: You may. 16 BY MR. PROCTOR: 17 I'm showing you what's already been admitted as Q 18 Government's Exhibit P-9. Let me come over here and hold 19 Do you see that, sir? it up. 20 Α Yes, sir. 21 And you were here when that was admitted. Q 22 Right? 23 Yes, sir. Α That shows where Mr. Morales' cell phone was on 24 Q the day of the murder? 25

Right. March 24, 2008. 1 2 And when you compare that map to where his cell Q phone was the day after the murder, do you see any 3 similarities? 5 Α Yes. 6 Q what are they? The cell towers that the cell phone was 7 connecting to on the 25th are consistent with the cell 8 9 towers that were connected to on the 24th. 10 Thank you. So basically, we know that his cell Q 11 phone was in the same vicinity -- the 24th was a Monday. 12 Right? 13 I believe so. Yes, sir. 14 Q So we know that his phone was in the same 15 vicinity the day after? Right. The 25th. 16 Α 17 So let's just move on. That's 15-A. This is Q 18 15-B, sir. Do you see that on your map? 19 Yes, sir. Α What does this show? 20 Q 21 That is the cell tower activity for the phone 22 number 2961 for March 26, 2008. 23 Two days after the murder? Q 24 Yes, sir. Α where was his cell phone bouncing off? Which 25 Q

towers was it hitting two days after the murder? 1 It's hitting off the same cell towers that are 2 Α 3 consistent with the date of the 24th and 25th. So three days in a row, he's in the same 4 Q 5 neighborhood? Yes, sir. 6 Α 7 Q All right. 15-C. What is that please, sir? That is the cell tower activity for phone number 8 9 2961 for March 27, 2008. 10 Okay. And summarize it for me if you would, Q 11 please? 12 Again this shows the cell tower activity related 13 to the cell phone for this particular time period and 14 again it shows some consistency with hitting the same 15 towers as it was on the 25th and the 24th. 16 Okay. 15-D. What is that, sir? Q 17 That is a map of the cell tower activity for 18 phone number 2961 for March 28, 2008. 19 And what does it show? Q 20 Again, it shows a consistency of hitting off the 21 same cell towers for the previous days. 22 15-E. Well, first of all, let's -- 15-D is Q 23 March 28. Right? 24 Yes, sir. Α And when I put 15-E up, what date is that? 25 Q

That is March 31st. 1 Α 2 So a three-day jump. Right? Q 3 Two day. Α well, you're right. You didn't do March 29th 4 Q through March 30th? 5 That is correct. 6 Α 7 Q Why not? That was a weekend. 8 9 Okay. So here we are back on Monday morning, a 10 week after the murder. Right? 11 That is correct. Α 12 And in a nutshell, what does Defense Exhibit Q 13 15-E show? 14 It shows a consistency of hitting off the same 15 cell towers as the previous days. This is the tower 16 activity for 2961. And let's just -- we could have point out, but 17 18 let's just take this one. The homicide location is right 19 there. Correct? 20 Α Correct. 21 The cell towers that the government has up on Q 22 the map that you can't see because it's at your feet are 23 right around this location. Right? It's at least two right here? 24 25 That is correct. Α

And so a week after the murder, Mr. Morales' 1 2 phone is still making calls that are bouncing off these 3 towers? That is correct. Α 15-F. What's that? 5 Q That is the cell tower activity for April 1, 6 Α 2008 for phone number 2961. 7 And what does that show? 8 9 That does not show the same cell towers as the 10 previous days. It does show the cell tower activity. 11 it's not consistent with the previous days. So it's an April fool's joke. Mr. Morales was 12 Q 13 not in that neighborhood? 14 Yes. 15 0 Last and hopefully not least, 15-G. What does 16 that show? 17 That shows the cell tower activity with phone 18 number 2961 for April 2, 2008. 19 Okay. And what does it show? Q 20 Again it shows consistency with the exception of 21 April 1st with the previous dates of hitting off the same 22 cell towers in the same area. 23 MR. PROCTOR: Can I have a second, please, 24 judge? 25 (Counsel conferred with his client.)

1 BY MR. PROCTOR: 2 One more question I neglected to mention. These Q 3 maps have the homicide location on it. Is that fair to say? 4 That is correct. It's marked with the red dot 5 Α and address that I took from the police report. 6 Okay. It also has and I'll zoom in so you can 7 Q see it, Frederick P. Winter Liquors. Do you see that? 8 9 Α Yes. 10 What is that address? Q 11 It's my understanding that that was a address Α 12 that Mr. Morales was working. 13 MS. WILKINSON: Objection. Based on what? 14 Personal knowledge? MR. PROCTOR: Well, that's a good --15 16 THE COURT: Rephrase the question. 17 MS. WILKINSON: Objection. Basis of knowledge. 18 BY MR. PROCTOR: 19 were you asked to plot the address of 1101 Q 20 DeSoto Road? 21 Yes, sir. Α 22 And is that depicted on this map? Q 23 Yes, it is. Α And not taking any one map in particular, but 24 Q most of these maps other than April 1, show Mr. Morales' 25

```
cell phone bouncing off towers in the neighborhood of 1101
 1
 2
      DeSoto Road?
 3
                 That is correct.
           Α
                 MR. PROCTOR: Judge, that's all I have.
                 THE COURT: All right. Redirect or cross.
 5
                 MS. WILKINSON: Different hats at this point.
 6
 7
      Thank you.
 8
                           CROSS-EXAMINATION
 9
                 BY MS. WILKINSON:
10
                 Mr. Folson, you and I have met before. Correct?
           Q
11
                 Yes, ma'am.
           Α
12
                 But you don't work for Sprint like Mr. Sanchez
           Q
      does?
13
14
           Α
                 I do not.
15
           Q
                 Correct. You're a private contractor, so to
16
      speak.
17
                 Private laboratory. Yes.
           Α
18
                You were paid to be here?
           Q
19
                 I was paid to be here. Yes, ma'am.
           Α
20
                 Mr. Sanchez works for the actual company that
           Q
      does this --
21
22
                 MR. ZUCKER: Objection.
23
                 BY MS. WILKINSON:
24
                 But you're a private contractor. Correct?
           Q
25
                 I'm not a contractor. I'm an employee of the
            Α
```

1 laboratory. You're getting paid to be here? 2 Q 3 I understand. Yes, ma'am. So with regard to the fact that Mr. Proctor had 4 Q shown you a number of maps, but not maps for March 24 --5 you're not quarreling with Mr. Sanchez's work. Correct? 6 I'm not sure I understand your question. 7 Mr. Sanchez's work that he indicated to the jury 8 9 in terms of the location of Mr. Morales' phone on the day 10 of the murder, you're not here to say that that was 11 incorrect. Correct? 12 Again I'm not -- I'm sorry, ma'am. I'm not Α 13 following you. 14 Q You haven't put anything up here that's 15 different than what Mr. Sanchez showed the location of Mr. 16 Morales' phone on March 24th. You agree with the way he plotted the cell sites. Correct? 17 18 Α Yes, ma'am. 19 I'm sorry if I'm being unclear. Q 20 That's okay. Α 21 So in other words, you're not here to quarrel or Q 22 challenge that. Correct? 23 I am not. That is correct. 24 In fact you've been sitting in the courtroom a Q 25 couple of days. You know that March 24th is the day of

1 the murder. Correct? 2 That is correct. 3 And you are here to tell the jury about dates Q other than the murder. Fair to say? On the maps you 5 have -- it's not a trick question -- you did March 31, April 1, April 2nd, March 28, March 27, March 26 and 6 March 25th, all dates other than the day of the murder? 7 Right. Those are all dates after the murder. 8 9 Not a trick question. Now one of the things 10 that I'm not sure I completely understand about your maps 11 is there's no date and times of the calls. Is that fair 12 to say? 13 The date that I plotted calls is in the lower 14 right hand corner. The times are actually the very first 15 numbers at the top of each little square. 16 So explain that to me. So give us an example 0 17 here. I'm circling one. This is on Government's Exhibit 18 15-A and it shows --19 MR. ZUCKER: Defense exhibit. 20 MS. WILKINSON: Oh, I'm sorry. 21 BY MS. WILKINSON: Defense Exhibit 15-A, 11520 and then a bunch of 22 Q 23 numbers underneath. Where would that indicate the time of the call? 24 Can you slide the map a little to the right? 25 Α

Um-hum. 1 0 2 Actually to the left. I'm sorry. Okay. The 3 11520, if you look to the left of that, you'll see another square with another cell tower that is 15:20. 4 This one right here? 5 Q That one right there. 6 Α 7 Q Okay. The way the mapping system works is that the 8 9 call started on the tower at 15:20 and ended on the other 10 tower at where it's marked 11520. So the very first digit 11 is the 15:20. It basically what the mapping system 12 showing that there's multiple calls for 15:20. So you 13 have 15:20 and then it puts a 1 in front of the second 14 15:20 that there is another entry in the phone records for 15 15:20. 16 15:20 being 3:20 p.m.? 0 17 3:20 p.m. Correct. Α 18 Q That's all I wanted to know. So these are 19 military time? 20 That is correct. And then the numbers below Α 21 that are the longitude and latitude of the cell tower itself. 22 Its location. 23 which comes from that data Mr. Sanchez Q 24 explained? 25 Right. It's mapped with the call detail Α

records. It's actually two records. You have to marry 1 2 them together to get that data. 3 I wasn't able to completely follow your maps. Q Ι had just received this. Is that fair say? 4 That is fair. 5 Α I didn't get this before the trial started. 6 Q 7 Correct? That is correct. 8 Α 9 MR. PROCTOR: Objection. 10 BY MS. WILKINSON: 11 So I haven't had a complete chance to digest Q 12 But on here, are you able to tell the jury how many 13 times Mr. Morales' phone hit upon the cell tower at 208 14 South Pulaski Street? 15 If I had the 208 South Pulaski Street, I 16 didn't -- we don't look -- we don't use street addresses 17 when we're dealing with cell towers. We use the longitude 18 and latitude because the street address is an approximate location of where that tower is. It is not the exact 19 20 location of that tower. So that's why all of mine are 21 plotted with longitude and latitude. I don't have --22 Can you tell the jury how many times the Q 23 longitude and latitude for that Mr. Sanchez also put on his map is hit off of Mr. Morales phone in that time 24 period? 25

I would have to actually compare the longitude 1 and latitude with what Mr. Sanchez provided. 2 3 Q Is that longitude and latitude? Which cell tower? Yes, it is. Α I'm showing the jury Government's Exhibit P-9. 5 0 So we have the 208 South Pulaski Street we know what the 6 longitude and latitude is. Are we able see how many times 7 Mr. Morales' phone if it physically hit off that cell 8 9 tower in the five or six days after the murder of 10 Mr. Long? 11 Okay. I'm showing a hit off that cell tower for Α 12 March 26, 2008. 13 At what time? Q 14 It looks like 12:23. 15 0 So we have one contact with that cell phone 16 number on March 26th. With that cell tower. 17 18 Two days after Mr. Long's murder and in that Q general vicinity? 19 20 That is correct. Α 21 Anything else? Point to me and I'll circle it. Q 22 (Indicating.) Α 23 Vicinity? Q I'm showing another hit on March 31, 2008 for 24 25 that same cell tower.

```
Is that one call?
 1
            Q
                 That is.
 2
            Α
 3
                 Point it out to me and I'll circle it.
            Q
                 Okay.
 4
            Α
                 Are you finished?
 5
            Q
                 I'm done.
 6
            Α
                 So would you agree with me that on each of the
 7
            Q
 8
      days that you plotted, there's probably I don't know 15 to
 9
       20 calls or cell towers that are being hit off on any
10
      particular day?
11
                 That is correct.
            Α
12
                 And we have, I don't know, six or seven
            Q
13
       different maps or dates?
14
                 That is correct.
15
                 And now you're telling the your there's only
            Q
16
      three times where that phone hit off the cell tower near
17
       south Pulaski Street .67 miles from the murder of Robert
       Long?
18
19
                 That is correct.
            Α
20
                 March 24th?
            Q
21
                 March 24th.
            Α
22
                 March 26th?
            Q
23
                 26.
            Α
                 March 31st?
24
            Q
25
            Α
                 Correct.
```

```
1
                 MS. WILKINSON: Nothing further, Your Honor.
 2
                 MR. PROCTOR: Briefly, judge.
 3
                        REDIRECT EXAMINATION
                 BY MR. PROCTOR:
                 The tower that's up on the screen and circled?
 5
           Q
 6
                 Yes, sir.
           Α
                 First of all, you were here again for
 7
           Q
      Mr. Sanchez's testimony. Right?
 8
 9
                 That's correct.
10
                 Do you necessarily hit the cell tower closest to
           Q
11
      where you're standing?
12
                 No, you do not.
13
                 And there are a lot of factors that go into
           Q
             Right?
14
      that.
15
           Α
                 That is correct.
16
                 And so over the seven days that we've gone
17
      through, right, how many times ballpark does Mr. Morales
18
      hit off cell towers in close proximity to what's up on the
      screen circled? Ballpark. More than ten?
19
20
                       I would say so. Yes.
           Α
                 Yes.
21
                 More than 20?
           Q
22
                 I wouldn't say 20. But more than 10.
           Α
23
                 So he may not have been hitting that exact
           Q
24
      tower, but he was in the vicinity?
                 That is correct.
25
           Α
```

```
And he did -- he hit it once and the day Robert
 1
           0
 2
       Long was killed, right, and only once?
 3
           Α
                 Correct.
                 And he hit it once later that week and once the
           Q
 5
      next week. Right?
                 That is correct.
 6
           Α
                 MR. PROCTOR: That's all I have.
 7
                                 Nothing further.
 8
                 MS. WILKINSON:
 9
                 THE COURT: You may step down, sir.
10
                 MR. ZUCKER: Moment to consult, please, judge
11
      before --
                 (Counsel conferred with his client.)
12
13
                 BY MR. PROCTOR:
14
                 And by the way, do you remember the questions
           Q
15
      Ms. Wilkinson asked you about the map up there that's P-9
16
      or whatever it is?
17
           Α
                 Yes.
18
                 The map that's up there shows sectors.
                                                          Right?
           Q
19
                 It does.
            Α
20
                 And ten seconds or less sectors are?
           Q
21
                 Sectors are -- cell phones when they set up cell
22
      towers, they typically set them up with three sectors
23
                Each sector are approximately 120 degrees and
      towers.
24
      when you add the three sectors together, that gives you --
25
                 (The court reporter asked the witness to slow
```

```
1
      down.)
 2
                THE WITNESS: I'm sorry.
 3
                MR. PROCTOR: It's my fault. I said ten seconds
      or less.
 4
 5
                 THE WITNESS: I'm going to do 20 seconds or
             So the cell phone companies will divide these
 6
      towers into three sectors. Each sector being about 120
 7
 8
      degrees. And then when you add the three sectors degree,
 9
      that supposedly gives you 360 for coverage for that cell
10
              So what this map is showing you a specific
11
      individual sector for towers of interest on this map.
12
                 BY MR. PROCTOR:
                Okay. And what that sector shows is that --
13
           Q
14
      well, first of all --
15
                MS. WILKINSON: Objection to leading, Your
16
      Honor.
17
                 BY MR. PROCTOR:
                Okay. We don't know where Mr. Morales was.
18
                                                               IS
           Q
19
      that fair to say?
20
                That is correct.
           Α
21
                 But within that -- where if anywhere does it
           Q
22
       show he was in relation to the homicide scene?
23
                Are you referring to the 9:46 a.m. call?
           Α
24
                Yes.
           Q
                The 9:46 a.m. call is hitting off the cell
25
           Α
```

1 tower. 2 MR. PROCTOR: May Mr. Zucker hold it, Your 3 Honor? Or can I put it up on the screen. THE WITNESS: Okay. So if this is the area of 4 5 your crime scene here, Tracy Atkins Park, this is the closest cell tower around the time of the homicide being 6 committed. This particular sector is Sector 4 of that 7 cell tower and that is a sector facing away from the crime 8 9 scene. What this depicts is that the person holding the 10 cell phone at the time this call was connected was on this side of the cell tower. That's what the sector shows. 11 12 MR. PROCTOR: That's all I have, judge. 13 THE COURT: All right. You may step down, sir. 14 Thank you very much. Counsel, come to the bench. 15 (Bench conference:) 16 THE COURT: All right. What else is on tap for the defense? 17 18 MR. PROCTOR: We need to consult with Mr. 19 Morales. 20 THE COURT: Let's do this. I really want to 21 have some time to talk about instructions. And I assume 22 the government is going to call Judge Murphy. Is there 23 anybody else? 24 MR. CLARKE: No. THE COURT: I'm going to tell the marshals I 25

```
want him up in 55 minutes, not 60 minutes. I want to
 1
 2
      start at precisely seven minutes of 2. Okay. Not one
 3
      minute later.
                MR. ZUCKER: We'll all be here. I promise you.
 4
 5
                THE COURT: All right. Thank you.
 6
                (In open court:)
 7
                THE COURT: All right. Ladies and gentlemen, we
      are going to take a precisely one hour lunch break. I
 8
 9
      want to be back on the bench at 7 minutes of 2 because we
10
      want to get finished by 3 and I got a lot to do other than
11
      just this matter. So we're getting close. We're not done
12
            But seven minutes of 2 and I want the --
13
                MR. CLARKE: May we approach briefly?
14
                THE COURT: All right. Come on up.
15
                (Bench conference:)
16
                MR. CLARKE: So we're not calling Judge Murphy
17
      now?
18
                THE COURT: No. We're breaking.
19
                MR. CLARKE: Okay.
20
                (In open court:)
21
                THE COURT: All right. We'll see you at 7
22
      minutes of 2.
23
                (Luncheon Recess.)
24
                               AFTERNOON SESSION
25
                MR. ZUCKER: Oh, I'll waive his presence, but
```

```
just to alert you, Mr. Morales has some issues he wishes
 1
      to raise with the Court. I've advised him I would ask you
 2
 3
      to just hear from him directly and not and it involves his
      dissatisfaction with our services and for that reason, I
 5
      ask that you hear from him outside of the presence of the
      government at your leisure.
 6
 7
                THE COURT: Wait until he gets here.
                (The defendant is present.)
 8
 9
                THE COURT: All right. Let me do a couple of
10
      things. The subject of whatever Mr. Morales wants to tell
11
      me, is the defense resting?
12
                MR. PROCTOR: Yes, sir.
13
                THE COURT: All right. And Mr. Morales, I want
14
      to repeat what I told you yesterday.
                MR. ZUCKER: If I could, sir? It's over the
15
16
      objection of our client.
                THE COURT: I understand. I understand.
17
18
      Morales, I want to repeat what I told you yesterday about
19
      your right to testify in your own behalf or to not testify
20
      in your behalf.
21
                                      I understand.
                THE DEFENDANT: Yes.
22
                THE COURT: Do you remember what I told you
23
      yesterday?
24
                THE DEFENDANT: Yes.
25
                THE COURT: Is your decision still not to
```

testify? 1 2 THE DEFENDANT: Yeah. It's still not to 3 testify. THE COURT: All right. Now what did you want to 4 5 tell me before your attorneys rest? MR. ZUCKER: Judge, can we do it outside of the 6 7 presence of the prosecution? MR. PROCTOR: It relates to defense trial 8 9 tactics and I don't think the government should --10 THE COURT: Well, let's clear the courtroom and 11 we'll discuss --MR. ZUCKER: If we could approach, if it's 12 13 easier for you, judge. 14 THE COURT: Well, actually, clear the courtroom for a minute and we'll hear what he has to say. 15 16 MR. PROCTOR: Judge, I don't mind if his family remains in. 17 18 THE COURT: All right. We can keep anybody 19 other than family out of the courtroom and don't go far because it won't be too long. All right. Mr. Morales, 20 21 what would you like to tell me? 22 THE DEFENDANT: Your Honor, I've been asking for 23 certain witnesses to be called from day one. From day one, I asked for a speedy trial. That was denied. 24 25 lawyers went against me for the speedy trial. From day

one, I gave a list of witnesses. My lawyers assumed that these witnesses wouldn't benefit us. Due to investigation last night or the night before or whatever, it's come out that they can help us a lot. And I'm facing a life sentence. No less. And they want to call two witnesses on my behalf when I give them a list of witnesses I've been asking them to call. And all throughout trial, I've been asking for these witnesses and they keep denying -- my due process rights says that I can -- I have the right to call these witnesses.

THE COURT: You have the right of compulsory process, Mr. Morales. You also have a right to an attorney and the Court has appointed two of the finest lawyers I know to represent you who are doing a excellent job for you. Decisions as to what witnesses to call or when to call them are classic tactical decisions that are made by lawyers, not by clients. That's what lawyers are for. And I recognize that you may feel that certain people ought to be called. But there may be significant down sides to calling some people and that's what lawyers have to take into account. They have to take into account whether matters are going to be made better or worse by calling someone. And those are very essential judgments that lawyers have to make in the course of representation of clients. Now you have two lawyers representing you who

are the highest caliber because of the fact that this case began as a death penalty case, a potentially death penalty case.

THE DEFENDANT: And I was willing to move forward with the death penalty case --

THE COURT: And you are entitled to have highly skilled lawyers in the case of a death penalty case.

That's why you have two lawyers, not one. And I know these lawyers. They are excellent lawyers and they make decisions. I don't make them for them. I can't tell you every decision they made are the same ones I would have made. But these are the decisions that are judgments that lawyers have to make in the course of representation of clients.

THE DEFENDANT: I don't understand the law completely like they do and I understand their smart lawyers. And what I'm looking at the law that I have read that the slight ineffectiveness is ineffective, especially on a murder trial. And for them to do a full investigation and not to do the research and the investigation on these witnesses, clearly that's ineffective.

THE COURT: Well, I understand. Your objection is noted. I don't agree with you. I think that the performance I have seen by these lawyers has been strong,

aggressive, eloquent, capable. And I know these lawyers. 1 2 I know Mr. Proctor better than Mr. Zucker. But they both 3 are excellent lawyers who are zealously in my judgment. THE DEFENDANT: Your Honor, you are letting a 5 chief judge come and testify for the government. But yet, we can't have no one come and testify for me? I mean 6 where is that in the fairness, the scales of justice? 7 where does that come in at? 8 9 THE COURT: All right. Mr. Morales, I've heard 10 your objection and I'm overruling it. All right. 11 All right. Bring the other side back in. 12 MR. PROCTOR: Judge, we would request that that 13 portion of the transcript be sealed. 14 THE COURT: I will direct that that portion of 15 the transcript be sealed subject of course to appellate 16 review or 2255 review of course. 17 MR. PROCTOR: Thank you. 18 THE COURT: Now. Mr. Zucker and Mr. Proctor, I 19 recognize that there's been objection by your client. 20 does the defense rest? 21 MR. PROCTOR: Yes, sir. 22 THE COURT: All right. Is there going to be a 23 rebuttal witness for the government? MR. CLARKE: There is, Your Honor. 24 THE COURT: All right. Let's bring the jury in. 25

1 (Jury present.) 2 THE COURT: All right. Ladies and gentlemen, 3 the defense has rested. We are now going to hear a rebuttal witness for the government. 4 5 MR. CLARKE: Your Honor, the government would call Judge Joseph Murphy to the stand, please. 6 THE CLERK: You can just step up here, please. 7 THE WITNESS: Good afternoon, Your Honor. 8 9 THE CLERK: Thank you. Raise your right hand. 10 Thereupon, 11 CHIEF JUDGE JOSEPH MURPHY, JR. 12 Having been called as a witness on behalf of the 13 government and having been first duly sworn by the 14 Deputy Clerk, was examined and testified as follows: 15 THE CLERK: Thank you. Please be seated. Just 16 need you to speak into the microphone in front of you and 17 begin by stating your name for the record. 18 THE WITNESS: Joseph Francis Murphy, Jr. 19 **DIRECT EXAMINATION** 20 BY MR. CLARKE: 21 Judge Murphy, what is your occupation? Q 22 I'm a retired judge, having retired from the 23 Court of Appeals of Maryland in November of 2011. I'm currently working for my daughter at her law firm. 24 All right. Sir, I'm going to take you back a 25 Q

1 little ways. When did you graduate from law school and which law school? 2 3 University of Maryland. 1969. And what did you do next? Q I worked for the Legal Aid Bureau for a few 5 months in 1970 and then joined the Baltimore City State's 6 Attorney's Office. 7 And how long were you there? 8 9 I was there from August the 31st of 1970 to 10 August the 31, 1976. 11 And then you went out and start your own firm? Q 12 I joined Russell White, the firm was White and Α 13 Murphy. We practiced in Towson, Baltimore County. 14 Q How long had you been doing that? 15 Α Since July of 1984. 16 What happened then? Q I was appointed to the Circuit Court for 17 Α 18 Baltimore County. 19 And how long were you a judge for the Circuit Q Court for Baltimore County? 20 21 Until 1993. 22 And when what happened? Q 23 I was appointed to the Court of Special Appeals 24 of Maryland. 25 And how long were you a judge with the Court of Q

Special Appeals? 1 2 Until 2007. Α 3 Would you explain just briefly what is the Court Q of Special Appeals for Maryland? 4 The Court of Special Appeals is an intermediate 5 appellate court. It was established in 1967 to deal with 6 the high volume of appeals being filed during that period 7 of time. It started off as a court of limited 8 9 jurisdiction and it really remains a court of limited 10 jurisdiction today. But when it began, it considered only 11 criminal appeals from the various circuit courts, the 12 trial courts and then over the years its jurisdiction 13 expanding. Now it hears almost every case that is 14 appealed from a circuit court. A party who's dissatisfied 15 with a circuit court decision has an absolute right of 16 appeal to the Court of Appeals. And between 1996 and 2007, did you hold any 17 18 particular title with the Court of Special Appeals? 19 I was appointed chief judge in 1996. Α 20 And what happened after you were -- after your Q 21 term as chief judge? 22 Α Well, I was appointed to the Court of Appeals in 23 2007. 24 And can you tell us what the Court of Appeals Q is? 25

A It's the highest court in the state reviewing the decisions of the other courts.

- Q And how long were you there?
- A Until November of 2011.

Q During your tenure as an attorney and or as a judge, did you have an occasion to serve on any judicial committees or bodies where you had the responsibility to oversee or review the conduct of attorneys or judges?

A Well, the circuit court judges hear cases involving complaints against attorneys and the Court of Appeals ultimately decides whether an attorney has violated a rule of discipline and what the appropriate sanction should be for a lawyer who has done so. So the Court of Special Appeals doesn't get involved in that. So while I served as a circuit court judge and a Court of Appeals judge, I did hear cases and consider cases involving attorney discipline matters.

I served as the chair of the rules committee appointed by the Court of Appeals of Maryland during the time I was chief judge of the Court of Special Appeals and that committee is charged with the obligation to recommend to the Court of Appeals appropriate rules changes including changes dealing with discipline of attorneys.

Q All right. Sir, do you know an attorney by the name of Stanley Needleman?

I do. 1 Α 2 And how long have you known him? Q 3 I first met Mr. Needleman in the early 1970's Α while I was an Assistant State's Attorney in Baltimore 4 City and he was in the private practice of law. 5 And how long did you all work together in those 6 Q 7 capacities? Well, I was appointed Deputy State's Attorney in 8 9 1975 and from 1975 until I entered private practice, my 10 duties were really administrative. So I didn't have cases 11 involving Mr. Needleman. We were opposing counsel during 12 the time I was serving as an Assistant State's Attorney. 13 Once you became a judge or in your other roles 14 that you've already testified to, did you have an occasion to interact with Mr. Needleman professionally? 15 16 He was occasionally before the circuit court for Α 17 Baltimore County in my courtroom. 18 Q And how about personally? Did you have a personal relationship with Mr. Needleman? 19 20 Mr. Needleman and I have been friends since we 21 first met. During the eight years I was in private practice, we had a good number of cases in which we 22 23 represented co-defendants. All right. And do you still consider yourself a 24 0 25 friend of Mr. Needleman?

1 Α Yes. 2 Over the years that you've known and worked with Q 3 Mr. Needleman, have you had an occasion to speak with other attorneys and members of the bar and the bench who 4 have also had an occasion to work and know Mr. Needleman? 5 6 Α Yes. And based upon your conversations with those 7 Q 8 individuals about Stanley Needleman, did you gain an 9 understanding or were you able to form an opinion about 10 Mr. Needleman's truthfulness? 11 Well, Mr. Needleman had an excellent reputation Α 12 for being a strong advocate for his clients and an 13 excellent reputation of truthfulness with his dealings 14 with the court. 15 0 And did there come a time when you were asked to 16 testify on behalf of Mr. Needleman at his sentencing? 17 Well, the last time I was in this courtroom was 18 on the day that Mr. Needleman was sentenced and I didn't 19 provide formal testimony in the sense that no oath was 20 administered to the people who spoke on his behalf. But I 21 did have occasion to address the Court on his behalf. 22 All right, sir. So we're clear, the 23 prosecution, that is Ms. Wilkinson and myself, we didn't call you as a witness at that time. Is that correct? 24 That's right. No, you did not. 25 Α

Mr. Needleman's lawyers called you at that time? 1 0 2 They did. Α 3 All right. And did you testify then about your Q professional and personal relationship with Mr. Needleman? 4 5 I recall doing so. Yes. And based upon your knowledge of that case, do 6 Q you currently have an opinion about the professional 7 relationship or professional reputation that Mr. Needleman 8 9 had with the bar and the bench in Maryland? 10 MR. ZUCKER: Your Honor, I'd object only in that 11 it be limited to what's at issue here, not his reputation 12 as a lawyer. What's at issue here is honesty and 13 truthfulness. 14 THE COURT: I'll permit it. Overruled. 15 MR. CLARKE: I will say, Your Honor, that I'd ask that the witness address himself to the character 16 17 trait of truthfulness as it relates to that reputation. 18 THE COURT: You will limit yourself accordingly. 19 THE WITNESS: Well, obviously, when the news 20 broke about Mr. Needleman's legal difficulties which 21 ultimately resulted in the quilty plea that he entered and 22 the sentencing that was imposed here in this courtroom, 23 people were very surprised and very disappointed about what they learned. He owned up to his guilt. I recall he 24 25 made restitution and never fought any factual issue

associated with the income tax violation. 1 But I think 2 it's fair to say that a number of people were as I say 3 surprised and disappointed to learn about that. BY MR. CLARKE: 5 And after learning about that and being surprised by it, did it nonetheless have any impact upon 6 your personal relationship and your opinion about Mr. 7 Needleman's relationship through the decades that you've 8 9 known him? 10 Well, Mr. Needleman was always and this is a 11 reputation he earned and an opinion I have formed, a very 12 hardworking, forceful advocate for his clients. But in 13 doing so, he never violated the rule of professional 14 conduct. At least in my opinion, he never did and I don't 15 think his reputation was such that he did, violate the 16 rule of professional conduct with respect to his duty, 17 candor to the tribunal. His duty of obeying rulings of the court and being candid with the court. 18 19 Being honest and truthful with the court? Q 20 Yes. Α 21 MR. CLARKE: No other questions, Your Honor. 22 THE COURT: All right. Cross-examination. 23 MR. ZUCKER: Thank you. One moment. Defense? 24 THE COURT: 25 MR. ZUCKER: Thank you, sir.

CROSS-EXAMINATION
BY MR. ZUCKER:
Q Good afternoon, Judge Murphy.
A Good afternoon.
Q It's safe to say Mr. Needleman is a friend of
yours?
A We are friends. Yes, we are.
Q It's safe to say that because he's a friend, you
don't want to see him in trouble?
A Well, I'm not sure I know how to answer that.
He's been in plenty of trouble. He's been convicted. He
served a sentence and I don't know that he's in any
additional trouble and I wouldn't want to see him get in
any I suppose.
Q And you certainly would do what you could to
help out a friend?
A I'm sorry?
Q You would certainly do that which you could to
help out a friend like Mr. Needleman?
A To the extent my testimony was truthful on his
behalf, yes, I would.
Q Now you said that you considered Mr. Needleman
never to have violated professional canons or the oaths of
being a lawyer. Is that correct?
A No. There's a lot of professional canons and

one of them involves paying your income taxes. 1 I'm 2 talking about the particular rule dealing with candor with 3 the tribunal. All right. One of the things a lawyer is supposed to do is protect a client's confidences. 5 Correct? 6 7 Α Yes. One of the things a lawyer is not supposed to do 8 9 is to pressure another lawyer, particularly a junior 10 lawyer to violate those confidences. Would you agree with 11 that? 12 Α I agree. 13 And so would you consider it a violation of an 14 ethical duty for a senior lawyer to pressure a junior 15 lawyer into breaching that duty of confidence? 16 Well, I guess I would like to know a little bit Α 17 more specific --18 Q Okay. 19 -- information. Α 20 would you consider it a breach of the duty for a Q 21 lawyer to pressure another lawyer in with whom he has a 22 professional association that is junior to him to breach a 23 confidence given by the junior lawyer's client who is a co-defendant of one of -- I'll put it in a form that makes 24 25 sense.

If you found out that Mr. Needleman had a junior lawyer working with him, asked that lawyer to represent the co-defendant and then went to that junior lawyer and asked the junior lawyer, notwithstanding the junior lawyer's duty to protect the client's confidences tell me whether or not your client is going to cooperate against my client. That would be a breach of professional duties, would it not?

A I'm not positive it is just to find out whether someone is cooperating.

Q If he's pressuring a jury lawyer to breach the confidence the junior lawyer owes to a co-defendant. Let me back up. There's always a potential conflict between co-defendants. Right?

A I'm sorry?

- Q There is always a potential conflict in --
- A There is always a potential conflict.
- Q And there is always a potential conflict that one co-defendant might cooperate against the other in order to get beneficial treatment. Right?
  - A That is right.
- Q And when a lawyer has represented a client that has made that agreement with the government, the lawyer has a duty to protect their client by not disclosing that to the co-defendant who's going to be in the conflict.

Right?

A It depends. I don't think there's a hard and fast answer to that question. If Lawyer A says to Lawyer B, please tell me if your client is going to cooperate and if that's all that's asked and there is no further exploration in an effort to disgorge confidential communications, I don't agree that that is a violation. It would be a violation to say now I want your client to lie about my client. That's crossing the line.

Q But when a lawyer resists and is pressured into disclosing a client confidence because they're economically, professionally, whatever, indebted to the senior lawyer, would you consider that an abuse?

A An abuse of a particular canon of -- an abuse of a particular Maryland rule of.

Q The duty of a lawyer to protect their own client's confidences. I go to Mr. Proctor and I pressure him to disclose to me what his client is doing in the case that is adverse to me or adverse to my client.

A Then how is the pressure applied?

Q Well, given the relationship, there's resistance from the junior lawyer. He seeks to avoid answering the question.

A And the question is is your client going to cooperate because, see, I draw a distinction between the

```
1
      question is your client going to cooperate and I want you
 2
      to tell me precisely what your client has said to the
 3
      prosecuting authorities. That's where the disconnect I
      quess comes in.
 4
 5
                Well, if the question is has your client cut a
           0
      deal to testify against us by proffering or debriefing
 6
 7
      with the government?
                well, has your client cut a deal, question mark,
 8
 9
      I don't think constitutes a violation. Has your client
10
      cut a deal by saying A, B, C, D, E, F and G to the
11
      government, that's where the line is crossed I think.
12
                All right. Now shifting gears for a moment.
           Q
13
      You've known Mr. Needleman since the '70's. As a State's
14
      Attorney, did you have cases against each other?
15
           Α
                 When I was an assistant.
16
                And that ended what, in 1976?
           Q
17
                 1975.
            Α
18
                 '75. And then you went into private practice.
           Q
19
      Right?
20
           Α
                Yes.
21
                And until '84 --
           Q
22
                 I was in private practice from 84 -- no.
23
            '76 to '84, private practice. Right.
24
                And occasionally, you and Mr. Needleman
           Q
       represented co-defendants?
25
```

1 we did. Α 2 So you worked closely in those instances. Q 3 Right? we did. 4 Α And then when did you go on to the court? 5 Q 1984. 6 Α 7 Q And --8 Circuit court. Α 9 So safe to say you haven't worked representing Q 10 co-defendants or worked representing as adversaries since 11 '84? 12 That's right. Α 13 And he occasionally appears before the appellate Q 14 courts -- but actually then you were a circuit court 15 judge. Right? 16 From '84 to '93, I was a circuit court judge. 17 And so occasionally you said a few times he Q 18 appeared in front of you as a practicing lawyer? 19 Α Yes. 20 If you had to estimate, how many times did he Q 21 try cases in front of you? 22 Once a month maybe. 23 And then since '93, you've been on the Court of Q 24 Appeals, Court of Special appeals and then the Court of 25 Appeals?

Appellate service since 1993. 1 Α 2 So that's roughly 20 years. Right? Q 3 I guess. Α And in those 20 years, Mr. Needleman 4 Q 5 occasionally may have appeared in front of you. But the bulk of his practice is trial? 6 The bulk of his practice is trial work. 7 Α So you haven't worked with him in the last 20 8 Q 9 vears? 10 That is right. Α 11 And so your relationship has been primarily Q 12 social for the last 20 years? 13 My relationship with him has been primarily 14 social. 15 Q And you've had occasion to discuss with 16 colleagues what their opinion was of Mr. Needleman. 17 Correct? 18 Α Yes. 19 And those colleagues to a certain extent know Q 20 that Mr. Needleman and you are friends? 21 I'm sure. 22 Okay. So one colleague addressing you in their 23 opinion of Mr. Needleman knowing that Mr. Needleman is a friend of yours, you would expect them to be less inclined 24 25 to say disfavorable things?

Not necessarily with the colleagues I served. 1 2 The judges on the Circuit Court for Baltimore County 3 weren't bashful about complaining about lawyers that they thought should be complained about and when I served as an appellate judge, my office was in the building where the 5 circuit court judges sit. So I would see them very 6 frequently. 7 So the relationship how a lawyer acts in front 8 9 of a judge is probably somewhat different than how he or 10 she interacts with a client? 11 I'm sure of that. Α 12 And also with other lawyers? Q 13 Α Yes. 14 All right. And generally -- well, with certain Q 15 exceptions, most of us try and put our face forward when 16 dealing with the court. 17 That's been my experience. 18 Now sometimes we step over the lines and get Q 19 yelled at a little bit. But, you know, as a general rule, 20 we try and act respectful and show our best sides to the 21 iudae. Right? I think that's correct. 22 23 And so you were consulting with people who saw Q Mr. Needleman in that situation? 24 25 Sure. Α

They saw, consult with other judges who 1 0 commented about a lawyer in front of them --2 3 Α That is right. -- how he appeared in front of them? Q 5 because of that and because you haven't really worked together in the last 20 years, you don't know how Mr. 6 Needleman interacts with clients as well? 7 I think that's right. 8 9 And so you can't really comment on how 10 straightforward, honest he may be with clients in those 11 confidential relationships? 12 I can only comment to the extent that on the 13 basis of my relationship with him and on the basis of what 14 I've seen, I will assume that he acts professionally with 15 his clients. 16 0 He was always known as a very hardworking and 17 talented lawyer. Right? 18 Α That is right. 19 But you now know -- well, you said everybody was Q 20 disappointed and surprised when the news came out that he 21 was convicted or charged and then later convicted. 22 Α Yes. 23 So in some -- that's some indication when people were surprised because people don't consider him or you 24 didn't consider him a dishonest person prior to that. 25

1 Right? 2 Right. Α 3 And you found out unfortunately for many years Q he had lied on his income tax both to the state and 4 5 federal government. Right? I don't know whether it was for many years. 6 mean I know that he was convicted of the tax violation. 7 All right. If the court records or the records 8 9 show that it was for five straight years, 2005 to 2010, 10 both federally and state --11 Yes. Α 12 -- that those lies were signed off, perpetrated Q 13 by Mr. Needleman, that's not a momentary transgression? 14 I would agree with that. 15 Q So that is a pattern of transgression and 16 dishonest for many years. Right? With respect to his income tax. Yes. 17 18 Now you also are aware he was convicted of Q 19 what's called the structuring violation. Right? 20 I really can't remember what he was convicted of Α and what he wasn't convicted of --21 22 Q I don't mean to cut you off. 23 Α Yes. If I told you that the records show that he was 24 Q also convicted of -- do you know what structuring is? 25

1 I know what structuring is. Yeah. 2 It's basically deliberately concealing the Q 3 amount of financial transactions? Α Right. If I told you he was convicted of that as well, 5 0 that reflects a certain intentional dishonesty? 6 with respect to the income tax. 7 Α And so notwithstanding the high esteem which you 8 9 regarded him and many of your colleagues regarded him, it 10 was clear he was involved in these activities because he 11 pled guilty to them. Correct? 12 Yes. Α 13 would that cause you to change your overall opinion about him being truthful, honest, et cetera, based 14 15 on his having done this for many years and been convicted 16 of this for many years? I don't think I'm comfortable with the idea that 17 18 somebody who doesn't pay all of his or her income tax 19 therefore loses credibility with respect to everything 20 else that he or she says. Certainly, his friends and 21 colleagues were surprised and disappointed about what 22 amounted to a stupid and silly thing to do. There's no 23 question about that. 24 Well, it's not just silly and stupid. It was Q 25 dishonest, was it not?

1 Α Yes. Your relationship has been primarily social in 2 Q 3 the past? THE COURT: This is asked and answered. 5 MR. ZUCKER: It's predicate. THE COURT: All right. 6 7 BY MR. ZUCKER: Do you know among people who work with him in 8 Q 9 the last 20 years representing, for instance, people from 10 the public defender service, do they share your opinion, 11 the lawyers down in the trenches today representing 12 clients beside Mr. Needleman? 13 I believe they share that opinion. 14 Q That people about people public defender service? 15 16 I'm sure there's half a dozen people in the 600 staff Public Defender's Office that don't have much use of 17 18 Mr. Needleman. There's many of them that don't have much 19 use for me. But --20 And one of them --Q 21 But I know lawyers who work with him. 22 daughter worked with him very often during her practice. 23 She did a good bit of his appellate work. 24 Actually that's the daughter who you're in the Q law enforcement with now? 25

1 Α Yes. And Mr. Needleman is now a client of that firm, 2 Q 3 is he not? He's not a client of mine. He's a client of the firm that you work with. 5 0 Correct? 6 7 Α I guess he is. Well, I mean there's a lawyer from that firm 8 Q 9 who's representing him? 10 In connection with this case? Α 11 Yes. Mr. White? Q 12 Does he --Α 13 Q Andy White? 14 Α Yes. Mr. White is counsel of Mr. Needleman. 15 Q And Mr. White is with your daughter's firm. 16 Correct? That he is. 17 Α 18 So essentially, I guess you're technical all Q counsel of firm? 19 20 Α Right. So but he is a client of the firm -- you're here 21 22 testifying on behalf of a client of the firm you work with? 23 I'm not really testifying on Mr. Needleman's 24 25 behalf. I'm testifying as a rebuttal witness for the

government. They called me and asked me if I would 1 present the testimony. I said I would. 2 I'm not 3 testifying for Mr. Needleman. well, we all appreciate that you have taken the 5 time to come here. But the subject matter relates to a client or the character of a client that your firm 6 7 represents? If Mr. White is "representing him" in this 8 9 proceeding which I don't think Mr. Needleman is a party to 10 the proceeding, then the answer to the question I guess is 11 yes. 12 Now lawyers in criminal cases are expected to 0 13 use -- to disclose their fee agreements to their clients. 14 Correct? 15 Α Yes. 16 And they're expected to put them in writing. 0 17 Correct? 18 Α I'm not sure they're expected to put them in writing. I know there's an issue about it. There are 19 20 cases in which it's wise to do that. But I don't know it 21 has to be done. I've represented a lot of people that 22 I've simply quoted a fee to and there was nothing in 23 writing. 24 Is a fee supposed to be put into a trust account Q until it's earned? 25

Until it's earned. 1 2 Right. Are you aware that Mr. Needleman had no Q 3 trust account in his practice? I'm not aware of that. So if he --5 Q MR. CLARKE: Objection. 6 7 THE COURT: Sustained. If he doesn't know, he doesn't know. 8 9 MR. CLARKE: There is no evidence in the record 10 on that, Your Honor, whatsoever. 11 THE COURT: So ladies and gentlemen, questions 12 are not evidence. Answers are. If he doesn't know the 13 answer, that's not a matter before the Court. 14 MR. ZUCKER: Moment to consult with opposing counsel for a second. 15 16 (Counsel conferred.) 17 BY MR. ZUCKER: 18 And if a lawyer took a fee that was unearned and Q 19 put it in the basement safe and kept it as their personal 20 property, would that be violating the canons of 21 professional responsibility? 22 well, if the lawyer kept it somewhere with the 23 idea that I won't put it in my pocket until I've earned it, I don't see a violation. 24 25 THE COURT: Counsel, come to the bench.

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(Bench conference:)
 1
 2
                THE COURT: How much more do you have for this
 3
      witness?
                MR. ZUCKER: I think I maybe --
 4
                THE COURT: I wanted to talk about instructions
 5
 6
      today.
 7
                MR. ZUCKER: Oh, I'm sorry. I think maybe one
      or two more questions and I'm done.
 8
 9
                THE COURT: Okay. One or two.
10
                (In open court:)
11
                BY MR. ZUCKER:
12
                You are aware that Mr. Needleman had secreted
           Q
13
      $1.2 million in cash in his basement at the time of
14
      arrest?
15
                I don't know what the exact amount was. But I
16
      do know that they found a substantial amount of money at
      that location.
17
18
                MR. ZUCKER: Thank you.
19
                MR. CLARKE: No other questions, Your Honor.
20
      Thank you.
21
                THE COURT: All right. Thank you very much.
22
      You may step down. All right. Counsel can come to the
23
      bench one more time.
                (Bench conference:)
24
25
                THE COURT: Should we let the jury go?
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1 MS. WILKINSON: Yes. 2 THE COURT: Okay. Let me do that now. 3 (In open court:) THE COURT: All right. Ladies and gentlemen, 4 5 I'm happy to tell you we're going to beat the 3:00 deadline. I'm going to send you home and then we have a 6 three-day gap now and there's a lot of opportunity for 7 8 trouble. Please remember everything I told you about text 9 messages, email, Google, Yahoo, City Paper, anything. 10 Please stay absolutely clean so that we can have a fair 11 and impartial jury deliberate on this case. All right. 12 And there was one juror who might want to be 13 excused. I don't know if you still want to be excused, 14 All right. Juror Number 3 without objection will be 15 excused. You do not need to return, sir. 16 MR. PROCTOR: Judge, that's Alternate Number 17 3 --18 THE COURT: Alternate Number 3. And I thank you 19 for your service very much and I wish I could spend some 20 time thanking you in person right now. But I know you've 21 been through two weeks of a very interesting trial. But 22 thank you very much. 23 All right. We will recess the jury and I'm 24 going to need to talk to the attorneys about some other 25 things.

(Jury excused.)

THE COURT: All right. Counsel, let me go through some instruction issues that I think I can resolve rather quickly. So get your copy of the instructions out because what I'd like to do is to get these so that they're in apple pie order and I can file them on Monday so you can give them the eagle eye and go through them.

We on our schedule we resume on Tuesday at 9:00 and then what my anticipation is after you tell me I've made a few more errors in the meantime, I will instruct right off the bat and you can be prepared for your closing arguments. Get your audio visual aides ready and all that stuff.

All right. Let me go through what I think are the remaining issues. The first was Instruction 15 on page 16. Does the defense really want me to give this instruction?

MR. PROCTOR: Hang on. I'll defer to the Court.

THE COURT: I don't think there's a factual issue in this case that would generate a need for this instruction. I mean if you really, really want it, I would modify it. But I mean I don't think that there's an issue in this case as to when -- I mean if the cell phone involved in this case was used, it clearly was used in Maryland.

MR. PROCTOR: When I start a trial, judge, I go to the same place for lunch every day and I eat the same thing. I always have a venue instruction in every trial I've ever had. I get it. We certainly won't be arguing venue. It hasn't been established in closing. But I'll defer to the Court. You know, it's like my patsy or something like that.

THE COURT: I think it's just confusing to give it. Under the circumstances where this case has Maryland stamped all over it, I don't think it will be appropriate to give it. So I will take out in light of our deferral, I will take out Instruction 15.

All right. The next one I have was you asked, Mr. Proctor, for me to put something in the instructions that talked about your client being incarcerated.

MR. PROCTOR: Yes. sir.

THE COURT: I have some language for you that I think would be appropriate. It would be on page 30 at the bottom of Instruction 29 which is going to get moved. But I will read you what I put down and see if this satisfies you. There has also been -- this is where it's talking about bad acts in the balance of the instruction. There has also been testimony that the defendant has been incarcerated at certain times. The fact that at times the defendant may have been incarcerated may not be considered

by you as evidence of his guilt in this case. 1 2 MR. PROCTOR: I like that a lot. Thank you, 3 sir. THE COURT: Does that work? Okay. All right. We will put that in. 5 The next instruction issue was on Number 34. 6 And the defense objected to this. I got out Sand and 7 Seifurt and looked at it and it appears that this is 8 9 literally word for word what's in Sand and Seifurt with 10 one exception and that is that the word, coerce, was 11 changed to threaten and I believe that it will be more prudent to change it back to coerce. Coercion can result 12 13 from a threat. And you are free to argue that from both 14 sides as to that. But I don't know why we need to change it from threaten to coerce. 15 16 MS. WILKINSON: Very well. 17 THE COURT: And I don't believe anything else in 18 here is one word different than Sand and Seifurt. 19 MR. PROCTOR: Our objection was not so much --20 and yes, change the word coercion and we have no 21 additional argument. It's more that we don't believe the 22 evidence warrants the instruction, period. But I've heard 23 you to deny that and I have no further argument. THE COURT: No. I believe the evidence does 24 warrant it. So I will give that instruction. I will 25

change it to coerce from threaten because actually, it ends up saying coercion in the last paragraph anyway.

MR. PROCTOR: Yes, sir.

THE COURT: The next issue that I had was on Instruction 50 on page 55. I have one typographical correction. I think that in the second line, the word A should be put in front of means. So I have done that.

MS. WILKINSON: Yes.

and Seifurt, it would certainly appear to me that this is pretty close to Sand. The only thing that I question is the language that's added and I've got Sand in front of me is the last sentence in the second paragraph. The one that begins the law only requires. Why do we need that? I recognize there may be some cases that have said that. But when I looked at this, it certainly seemed to me that the -- Sand doesn't have it. I don't know why we need it.

MS. WILKINSON: And the government's only point is here, Your Honor, again going back to what a lot of murder for hire cases is about which is an undercover calling and saying I'll pay you -- you'll pay me \$10,000 to kill your wife and that one use of the phone is charged because it's clearly the actual contact about the actual murder. Here, where -- and that's not what the statute envisions. The statute is much broader than that to

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1
      prohibit use of a phone with the intent that a murder be
 2
      committed. And here we don't have that latter part which
 3
      is the way some people think of a murder for hire scheme,
      which it's just that one call where, hey, I'm going to pay
 5
      you $10,000 to kill my wife. That is not the facts of
      this case and that's what I was trying to clarify here.
 6
      But if the Court doesn't want to give it, I understand
 7
             But I certainly want to be able to argue that
 8
 9
      because I think it is what the law is.
10
                THE COURT: Well, I mean what's the position of
11
      the defense?
12
                MR. ZUCKER: We prefer it be out.
13
                MR. PROCTOR: We prefer it be out. And, judge,
14
      we have a separate addition. But why don't we cross that
15
      bridge first and then we'll talk --
16
                THE COURT: To this instruction?
17
                MR. PROCTOR: Yes.
18
                THE COURT: Well, tell me what it is.
19
                MR. PROCTOR: That the case, Your Honor, and I
20
      found it at 10:30 last night. I understand the Court may
21
      want to spend the weekend looking at it. It's United
22
      States v. Driggers, D-R-I-G-G-E-R-S, Which is at 559 F.3rd
23
      1021 and the jump cite is 1023 --
                THE COURT: What is it?
24
                MR. PROCTOR: 1021 and the jump cite is 1023.
25
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It's a Ninth Circuit 2009 case.
 1
                THE COURT: Ninth Circuit?
 2
 3
                MR. PROCTOR: It also approves the Eighth and
      the Tenth, Your Honor. So it's not -- I know when I cite
 4
 5
      the Ninth or the First Circuit, everyone rolls their eyes.
      But that case involved traveling across interstate lines.
 6
      But if you take the word interstate lines out and replace
 7
      it with facility of interstate commerce, the instruction
 8
 9
      would read the defendant must have had a murderous intent
10
      when he used the facility of interstate commerce.
11
      other words -- it was 10:30 at night. My typing is not
12
             But the facility of interstate commerce must have
13
      been done with the intent that a murder --
14
                THE COURT: Well, that's what the next
      instruction covers.
15
16
                MR. PROCTOR: -- be committed.
17
                THE COURT: Instruction 51 covers that.
                                                          Must
18
      have been done with the intent that the murder be
      committed.
19
20
                MR. PROCTOR: But then it talks about
21
      conditional and all and I don't believe --
22
                THE COURT: Well, I haven't gotten to that yet.
23
      I'm not particularly enthused about that language.
24
                MR. PROCTOR:
                              Okay.
25
                THE COURT: So let me suggest this. I'm going
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I'm not sure I need to do that and I think the previous language fairly covers it. And because the previous sentence says it need not have been the only reason or even the principal reason for the use of it so long as it was one of the reasons for the use of the facility. So I think that's covered fairly by that. So I'll make those two changes to this and I'll put A in in front of means in the second line and I'll delete the last sentence of the bolded language in the second paragraph.

All right. Now let's go to the Instruction 51 on page 56. I need to be convinced by the government why this language is necessary. It's not in Sand and I don't know why we need it. I mean I can see a note coming back from the jury what do you mean conditional, I don't understand.

MS. WILKINSON: Meaning that, for example, the contact with Mr. Needleman on March 20th, the jury could find that that contact was had where Mr. Morales had called to ask about Mr. Long's cooperation and they could find out was the use and they're trying to decide was that with the intent that a murder be committed. And to use the Court's example the other day, does that mean he has to have decided to kill Mr. Long before he called Mr. Needleman or is it that if I find out that he is killing,

that he is cooperating, I am going to kill him, let me find that out for Mr. Needleman. And, of course, we don't have what's in the defendant's mind because that's just the state of what proving intent is all about. So we have to make inferences and we have to have direct and circumstantial evidence about what was in his mind. And that is the concern I have which is that that call, for example, is one where this particular statement of the law is useful meaning that that is a use of the phone with the intent that a murder be committed, if the jury finds that Mr. Morales did it, called it with that condition in mind that he was going to complete this task if he found out he was cooperating.

THE COURT: All right. Let me hear from the defense again.

MR. PROCTOR: First of all, judge, I read the Vasco case last night which is the case primarily cited by the government. That involved the case where if you can't abduct her, then kill her. And the case just said, you know, the fact that it was either or made it irrelevant. I mean there was no basis here to give the conditional intent instruction. Regardless of conversations with Mr. Needleman, it's murder for hire. There was no one said if you can't put Mr. Long on a slow boat to China, then go ahead and kill him. There is no generated by the evidence

reason to give conditional intent --1 2 THE COURT: Well, if they called, for example, 3 to Needleman to find out if he's cooperating, that call wasn't made for the purpose of causing his death. It's to find out whether he was cooperating in which case now 5 without any conditions at all, bump him off, period. 6 7 MR. PROCTOR: I agree. THE COURT: All right. I'm going to take this 8 9 language out. I think it's confusing for the jury. If 10 they have a question, they can come back and ask me. 11 All right. Then the next thing I have is on the 12 third element. There is an objection to the government's 13 request for the third element. What is the -- I mean the 14 bold language on Instruction 52 on page 58. 15 MR. PROCTOR: It's mostly the first sentence, 16 judge. The statute does not require to pay something in 17 exchange -- exist at the time of the use of the interstate 18 commerce facility. I believe that's an incorrect 19 statement of law and the case I would cite is United 20 States versus Wicklund, W-I-C-K-L-U --THE COURT: Wait a minute. Hold it. I don't 21 22 take shorthand. 23 MR. PROCTOR: Sorry. 24 THE COURT: She does. I don't. Give me the 25 name again.

1 MR. PROCTOR: Wicklund. W-I-C-K-L-U-N-D. And 2 that's 114 F.3rd 151, 1997 --3 THE COURT: Wait a minute. F.3rd what? MR. PROCTOR: 4 151. 5 THE COURT: And what circuit? 6 MR. PROCTOR: Tenth. 7 THE COURT: Tenth. Not the Ninth. MR. PROCTOR: Definitely not the Ninth or the 8 9 I know better if I can avoid it. First. 10 THE COURT: I don't like getting the R stamp on 11 So I would be very careful with a Ninth Circuit these. 12 But I understand. case. 13 MR. PROCTOR: So and the language I've lifted 14 out of Wicklund is -- it talks about the as consideration 15 for in this statute covers two murder-for-hire situations. 16 Payment now or a promissory agreement to pay in the 17 future. And so it's our position the instruction, the way 18 I read it is vague. You know, there's no at the time of 19 the use of the interstate commerce facility. There must, 20 at the time of the use, there must be some agreement to 21 pay either I'll give you 3,000 bucks and then you go kill Rob Long or if you kill Rob Long, later on down the line, 22 23 I'll, you know, I'll make it worth your while, I'll give 24 you 3,000 bucks or 20,000 or 10,000. That is what I believe the correct statement of law is. 25

MS. WILKINSON: Your Honor, it's confusing apples and oranges here. There's two separate elements. One is the use of the phone with intent that a murder be committed and the second one is that the murder be committed in exchange for something of pecuniary value. There's nothing that ties the fact that it must be for pecuniary value be part of the use of the telephone. And that's why it's important to show here that that pecuniary value was a separate element that is not tied to the use of the phone. It's simply part of what has to be the plan for the murder --

THE COURT: Well, isn't that covered by the existing instruction the way it is?

MS. WILKINSON: This part right here, Your Honor, the statute exists at the time of the use, it doesn't have to be that the call or the use of the phone is about the exchange of the money or the amount of pecuniary value and we have that in this case. We have Mr. Kemper's testimony that the -- that he went to go look for Mr. Morales with Mr. Lucas to collect money and then we have Mr. Stokes' testimony, Ms. Hart's and Mr. Stokes' testimony that there was a meeting afterwards and it's not important in terms of the use and that's why I want to make sure that the jury understands they are two separate elements.

Judge, I probably wouldn't object 1 MR. PROCTOR: 2 to the very last sentence. It's the one before that. 3 confused me. I had to read it eight times. THE COURT: Well, tell me what you would agree 5 to. The last sentence. 6 MR. PROCTOR: 7 sufficient if the agreement to pay something of pecuniary value for the murder of Robert Long came before or after 8 9 the use of the interstate facility. 10 MS. WILKINSON: That's fine, Your Honor. 11 THE COURT: Okay. 12 MS. WILKINSON: It is the same thing. 13 THE COURT: You got a deal. Fine. All right. 14 I will leave in the sentence that says that is it is sufficient if. That will remain in. The rest will go out 15 16 the window. 17 MS. WILKINSON: Thank you. 18 THE COURT: Now that is all I have for the 19 instructions. Does anybody have any new and exciting 20 instructions they wanted to give? I will look at your 21 cases by the way over the weekend. 22 MR. PROCTOR: Thank you. I know you're going to 23 turn into a pumpkin as you say. 24 THE COURT: I am. MR. PROCTOR: I just wanted to revisit one issue 25

so we're not wasting the jury's time on Tuesday.

THE COURT: Okay.

MR. PROCTOR: I don't remember the exhibit number. But again, we have a statement of probable cause for Mr. Morales' other arrest going back to the jury. It is a police report. When the witness testified about the scaffolding, we were able to confront him that, you know, isn't it a fact the case wasn't great, the scaffolding wasn't stamped, it didn't have his name on it, Mr. Morales wasn't home when the search warrant was executed. We had all that.

We have a report by a police officer that wasn't confronted going back to the jury and I would ask at a minimum that Your Honor take them back over the three-day weekend and have a look at them and let us know on Tuesday. I don't have a problem with the penalties and the charge and stuff going back to the jury. It's just the statement of probable cause attached to it.

MS. WILKINSON: Your Honor, in the interest of time, I know that we are meeting with the clerk on Monday to talk about exhibits. Perhaps I can talk to counsel and we might be able to resolve this without the Court having to read statements of probable cause. Because we might be willing to make some redactions and let me talk with --

THE COURT: All right. You're very good lawyers

on both sides. I encourage you to work with each other and see what you can work out.

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Now let's talk about Tuesday. I got it set to start at 9:00 and what -- here's what my plan is. going to take these instructions and I'm going to have my assistant put them in final form. They will not have the instruction numbers. They will not have the citations. It will be one great big long speech. So if you have problems, you are going to have to go back and figure out where it came from and so forth. And I will get it -what I will do is I will have it done. It will be a PDF document. It will be docketed and you can look at it. And that also gives you the benefit unless we have to do brain surgery to these instructions on Tuesday, that you can refer to them by page number in your closing arguments. So I'd like to give the attorneys the benefit of being able to invoke something in the instructions and the jury won't know that.

The jury is going to be given their own unautographed copies of the instructions that they can take home with them. But they will all have a copy of the instructions. And they will all have the verdict form. I haven't heard anybody complain about the verdict form. So I assume the verdict form is not in controversy.

MS. WILKINSON: It was submitted jointly.

1 THE COURT: Okay. 2 MR. PROCTOR: It couldn't be more simple for 3 once. THE COURT: It's straightforward. Guilty or not 4 5 guilty. Yes or no, resulted in a murder. So that's the end of that. 6 7 All right. Well, let me get moving on the instructions. I will place them in final form. We will 8 9 PDF them. I anticipate that once I look them over one 10 more time Monday morning, that by high noon Monday, you'll 11 have something to read over. And try to get here a few 12 minutes early because I promised the jury we're going to 13 start right off the bat at 9. 14 We may or may not have more issues with jurors 15 who are going into the third week and may have issues. 16 But if we do, we'll deal with it then. So I will -- now 17 if both sides have said they need like an hour and 15 or 18 an hour and a half to do closing. Is that about right 19 what you told me? 20 MR. CLARKE: Total. 21 THE COURT: I don't set arbitrary limits. 22 somebody tells me they are going to go an hour and a half 23 and then they go three hours, I start to turn green. But 24 I will not pull you off the podium.

MR. CLARKE: Now in opening-close, Your Honor,

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we're going to try and stick to an hour, an hour and 15
 1
 2
      minutes. And then Ms. Wilkinson will be doing
 3
      closing-close.
                MS. WILKINSON: I will be doing rebuttal, Your
 4
 5
      Honor. And I haven't thought about it yet, but I would
      suspect I would take about a half-hour to 45 minutes.
 6
                THE COURT: That's reasonable.
 7
                MS. WILKINSON: And who's going to close for the
 8
 9
      defense?
10
                MR. ZUCKER: Probably me.
11
                THE COURT: All right. How much time do you
12
      need?
                MR. ZUCKER: Commensurate with theirs.
13
                                                         I won't
14
      need more.
15
                THE COURT: An hour and a half tops?
16
                MR. ZUCKER: Well, they've actually asked for
17
             They've asked for an hour and 15 plus 45.
      more.
                MS. WILKINSON: Because that's our burden of
18
19
      proof.
20
                MR. ZUCKER: Right. Right.
21
                THE COURT: I have always been a big fan of the
22
      word that long is wrong and short is good and brevity is
23
      supreme.
                MR. ZUCKER: I will endeavor not to waste time
24
25
      and not to be repetitive. I do tend to give longer
```

closings. You probably would have predicted that. 1 2 anyway, I just don't want to have to be watching my watch 3 and rushing through anything. I can't imagine I'd go two hours. 4 5 THE COURT: Well, I anticipate that -- assuming we have a few preliminary matters and we have to go 6 through a couple of things when I come on the bench on 7 8 Monday, I should be off and running with these 9 instructions by 9:30. Tuesday I meant. And they're not 10 that long. So I mean 35 minutes, 40 minutes tops to read 11 It's a single defendant, single count case. 12 it's not like a conspiracy case where I have to read on 13 and on and on. And so you ought to be planning that by 14 about 10:30 the first opening statement takes place and 15 with any luck, we might be able to have them all finished 16 before lunch. But if not, we'll break and have a rebuttal 17 for dessert after lunch. All right. Have a good weekend. 18 I will --19 MR. PROCTOR: Judge, I don't have strong 20 feelings, but I've always thought it's like cruel and 21 usual punishment to make three alternates sit through 22 closings when they're just about to be discharged. 23 I'm going to keep them right here. THE COURT: 24 Okay. MR. PROCTOR: THE COURT: I don't want to have the absence of 25

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an insurance policy that they've heard the arguments and
 1
 2
      when they go out and deliberate and two days later, one of
      them says I can't go any farther and I can't bring an
 3
      alternate in. I want to have the alternate ready to come
 4
      back if necessary. So I won't do that. All right. Have
 5
      a good weekend. We'll see you Tuesday.
 6
                 (Proceedings concluded.)
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1 CERTIFICATE OF REPORTER 2 3 I, Lisa K. Bankins, an Official Court Reporter for the United States District Court for the District of 4 Maryland, do hereby certify that I reported, by machine 5 shorthand, in my official capacity, the proceedings had 6 and testimony adduced upon the trial in the case of the 7 United States of America versus Jose Joaquin Morales, 8 9 Criminal Action Number RWT-12-0480, in said court on the 10 4th day of October, 2013. 11 I further certify that the foregoing 193 pages 12 constitute the official transcript of said proceedings, as 13 taken from my machine shorthand notes, together with the 14 backup tape of said proceedings to the best of my ability. 15 In witness whereof, I have hereto subscribed my 16 name, this 4th day of March, 2014. 17 18 Lisa K. Bankins 19 20 Lisa K. Bankins Official Court Reporter 21 22 23 24 25

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[7]54797/12797/1008080**6-DK (\$tat**encets|[2]|216123/873**08/**2**3||ed=03/07/1 4175@190ge 218 of 223 1806/5 1807/7 1809/17 1810/11 STATES [9] 1621/1 1621/3 1621/9 1621/11 summarized [2] 1625/19 1690/1 1621/20 1800/22 1804/20 1814/4 1814/8 sometimes [3] 1652/17 1653/13 1786/18 summary [6] 1655/4 1655/9 1656/3 1712/16 somewhat [1] 1786/9 1732/5 1733/12 stating [3] 1631/22 1742/18 1771/17 somewhere [2] 1732/20 1793/22 statute [5] 1799/24 1799/25 1804/16 1805/15 Sunday [5] 1643/24 1643/25 1700/6 1700/12 son [1] 1697/18 1806/15 1701/10 sorry [16] 1623/11 1673/8 1673/20 1691/3 stay [2] 1666/12 1795/10 Sunderland [5] 1662/5 1678/22 1679/16 1709/19 1728/15 1747/14 1755/12 1755/19 stenography [1] 1621/23 1682/9 1682/18 1756/20 1757/2 1763/2 1779/17 1781/15 step [7] 1675/11 1738/4 1762/9 1764/13 Sunderland's [1] 1678/25 1794/7 1804/23 1771/7 1786/18 1794/22 Sunrise [1] 1639/14 sort [1] 1678/8 steps [2] 1653/15 1666/21 support [1] 1634/10 sound [1] 1721/14 Steve [1] 1662/5 suppose [2] 1625/18 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